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STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

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Constitution of 1879 as Amended

Measures Submitted to Vote of Electors,
Primary Election, June 7, 1994
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General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature

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that the child is in need of the care and services provided by that group home program.

(f) The interagency placement committee shall document the results of the assessment required by subdivision (e) and shall notify the appropriate group home provider and county placing agency, in writing, of those results within 10 days of the completion of the assessment.

(g) If the child's placement is not funded by the Aid to Families with Dependent Children-Foster Care Program, a licensed mental health professional, as defined in Sections 629 to 633, inclusive, of Title 9 of the California Code of Regulations, shall certify that the child is seriously emotionally disturbed, as defined in Section 5600.3 and Section 1502.4 of the Health and Safety Code.

SEC. 3. Section 4096.5 of the Welfare and Institutions Code is amended to read:

4096.5. (a) The department shall make a determination, within 45 days of receiving a request from a group home to be classified at RCL 13 or RCL 14 pursuant to Section 11462.01, to certify or deny certification that the group home program includes provisions for mental health treatment services that meet the needs of seriously emotionally disturbed children. The department shall issue each certification for a period of one year and shall specify the effective date the program met the certification requirements. A program may be recertified if the program continues to meet the criteria for certification.

(b) The department shall, in consultation with the Conference of Local Mental Health Directors and representatives of provider organizations, develop the criteria for the certification required by subdivision (a) by July 1, 1992.

(c) (1) The department may, upon the request of a county, delegate to that county the certification task.

(2) Any county to which the certification task is delegated pursuant to paragraph (1) shall use the criteria and format developed by the department.

(d) The department or delegated county shall notify the State Department of Social Services Community Care Licensing Division immediately upon the termination of any certification issued in accordance with subdivision (a).

SEC. 4. Section 11462.01 of the Welfare and Institutions Code is amended to read:

11462.01. (a) As of July 1, 1994, group home programs that meet all of the following requirements shall be classified at RCL 13 and RCL 14:

(1) Generate the requisite number of points for RCL 13 or RCL 14.

(2) Only accept children with special treatment needs, as determined through the assessment process required by subdivision (d) of Section 11467.

(3) Have, as part of the group home program, measurable

performance standards developed by the county of placement.

(b) Commencing July 1, 1992, and until June 30, 1994, a group home program shall be classified at RCL 13 or RCL 14 if the program meets all of the following requirements:

(1) The group home program is providing, or has proposed to provide, the level of care and services necessary to generate sufficient points in the ratesetting process to be classified at RCL 13 if the rate application is for RCL 13 or to be classified at RCL 14 if the rate application is for RCL 14.

(2) (A) (i) The group home provider shall agree not to accept for placement into a group home program AFDC-FC funded children, including voluntary placements and seriously emotionally disturbed children placed out-of-home pursuant to an individualized education program developed under Section 7572.5 of the Government Code, who have not been approved for placement by an interagency placement committee, as described by Section 4096. The approval shall be in writing and shall indicate that the interagency placement committee has determined the child is seriously emotionally disturbed, as defined by Section 5600.3 and subject to Section 1502.4 of the Health and Safety Code, and that the child needs the level of care provided by the group home.

(ii) For purposes of clause (i), group home providers who accept seriously emotionally disturbed children who are assessed and placed out-of-home pursuant to an individualized education program developed under Section 7572.5 of the Government Code shall be deemed to have met the interagency placement committee approval for placement requirements of clause (i) if the individualized education program assessment indicates that the child has been determined to be seriously emotionally disturbed, as defined in Section 5600.3 and subject to Section 1502.4 of the Health and Safety Code, and needs the level of care described in clause (i).

(iii) Any group home program that, during the 1991–92 fiscal year, was paid a rate at RCL 13 or RCL 14 and applied for RCL 13 or RCL 14 on the 1992–93 fiscal year annual rate application, shall not be required by this subdivision to obtain an interagency placement committee approval, as required by this subdivision, for children placed prior to July 1, 1992, if the child has been certified pursuant to clauses (i) and (ii) of subparagraph (B) of paragraph (3) or clauses (i) and (ii) of subparagraph (B) of paragraph (5) of subdivision (g) of Section 11462, as amended by Section 4 of Chapter 610 of the Statutes of 1991.

(B) (i) Nothing in this subdivision shall prevent the emergency placement of a child into a group home program prior to the determination by the interagency placement committee pursuant to subclause (i) of subparagraph (A) if a licensed mental health professional, as defined in the department's AFDC-FC ratesetting regulations, has evaluated, in writing, the child within 72 hours of placement, and determined the child to be seriously emotionally disturbed and in need of the care and services provided by the group

home program.

(ii) The interagency placement committee shall, within 30 days of placement pursuant to clause (i), make the determination required by clause (i) of subparagraph (A).

(iii) If, pursuant to clause (ii), the placement is determined to be appropriate, the committee shall transmit the approval, in writing, to the county placing agency and the group home provider.

(iv) If, pursuant to clause (ii) the placement is determined not to be appropriate, the child shall be removed from the group home and referred to a more appropriate placement, as specified in subdivision (g).

(C) (i) If a county does not have an interagency placement committee, or if a county has an interagency placement committee but procedures are not in place, the placing agency may, until 90 days from the effective date of the amendments adding this provision to this section, make placements in RCL 13 or RCL 14 group homes, if a licensed mental health professional, as defined in Sections 629 to 633, inclusive, of Title 9 of the California Code of Regulations, makes a determination prior to placement that the child is seriously emotionally disturbed.

(ii) With respect to the referral of children referred during the period commencing July 1, 1992, and ending 90 days from the effective date of the amendments adding this provision to this section, without the approval of an interagency placement committee, the committee shall subsequently review the referral within 30 days of the establishment of the committee or the adoption of procedures for the committee. If the committee determines that the placement is not appropriate or that the child no longer needs, or is not benefiting from, placement in an RCL 13 or RCL 14 group home, the committee shall require the removal of the child and a new disposition of the child.

(iii) Commencing 90 days from the effective date of the amendments adding this provision to this section, with respect to AFDC-FC funded children, only those children who are approved for placement by an interagency placement committee may be accepted by a group home under this subdivision.

(iv) Any county that does not establish an interagency placement committee or does not adopt procedures for the committee within 90 days from the effective date of the amendments adding this provision to this section, shall remove any child placed in an RCL 13 or RCL 14 group home within 30 days. Any county that does not remove a child pursuant to this subclause shall be subject to a penalty in the amount of the state and federal financial participation in the AFDC-FC rate paid on behalf of the child commencing on the 31st day and continuing thereafter until the child is removed.

(3) The group home program is certified by the State Department of Mental Health pursuant to Section 4096.5.

(c) The department shall not establish a rate for a group home requesting a program change to RCL 13 or RCL 14 unless the group

home provider submits a recommendation from both the host county and the primary placing county that the program is needed and that the provider is willing and capable of operating the program at the level sought. For purposes of this paragraph, "host county," "primary placing county," and "program change" mean the same as defined in the department's AFDC-FC ratesetting regulations.

(d) The effective date of rates set at RCL 13 or RCL 14 shall be the date that all the requirements are met, but not prior to July 1 of that fiscal year. Nothing in this section shall affect RCL 13 or RCL 14 ratesetting determinations in prior years.

(e) Any group home program that has been classified at RCL 13 or RCL 14 pursuant to the requirements of subdivision (b) shall immediately be reclassified at the appropriate lower RCL with a commensurate reduction in rate if either of the following occurs:

(1) The group home program fails to maintain the level of care and services necessary to generate the necessary number of points for RCL 13 or RCL 14, as required by paragraph (1) of subdivision (b), during any 90-day period. No average fiscal year RCL, as used in the department's AFDC-FC ratesetting regulations, or corrective action, as defined in the department's AFDC-FC ratesetting regulations, shall be used to determine the date at which that event has occurred.

(2) The group home program fails to maintain a certified mental health treatment program as required by paragraph (3) of subdivision (b).

(f) The interagency placement committee shall periodically review, but no less often than that required by current law, the placement of the child. If the committee determines that the child no longer needs, or is not benefiting from, placement in a RCL 13 or RCL 14 group home, the committee shall require the removal of the child and a new disposition.

(g) (1) (A) If, at any time subsequent to placement in an RCL 13 or RCL 14 group home program, the interagency placement committee determines either that the child is not seriously emotionally disturbed or is not in need of the care and services provided by the group home program, it shall notify, in writing, both the county placing agency and the group home provider within 10 days of the determination.

(B) The county placing agency shall notify the group home provider, in writing, within five days from the date of the notice from the committee, of the county's plan for removal of the child.

(C) The county placing agency shall remove the child from the group home program within 30 days from the date of the notice from the interagency placement committee.

(2) (A) If a county placing agency does not remove a child within 30 days from the date of the notice from the interagency placement committee, the group home provider shall notify the interagency placement committee and the department, in writing, of the county's failure to remove the child from the group home program.

(B) The group home provider shall make the notification required by subparagraph (A) within five days of the expiration of the 30-day removal period.

(3) Any county placing agency that fails to remove a child from a group home program under this paragraph within 30 days from the date of the notice from the interagency placement committee shall be assessed a penalty in the amount of the state and federal financial participation in the AFDC-FC rate paid on behalf of the child commencing on the 31st day and continuing until the child is removed.

(h) (1) Except as provided in subparagraph (C) of paragraph (2) of subdivision (b), any RCL 13 or RCL 14 group home provider discovers that it does not have written approval for placement of any AFDC-FC funded child placed on or after July 1, 1992, from the interagency placement committee, it shall notify the county placing agency, in writing, and shall request the county to obtain approval from the interagency placement committee or remove the child from the group home program. A group home provider shall have 30 days from the child's first day of placement to discover the placement error and to notify the county placing agency.

(2) Any county placing agency that receives notification pursuant to paragraph (2) of subdivision (g) shall obtain approval for placement from the interagency placement committee or remove the child from the group home program within 30 days from the date of the notice from the group home provider. The program shall not be reclassified to a lower RCL for a violation of the provisions referred to in this paragraph.

(3) (A) If a county placing agency does not have the placement of a child approved by the interagency placement committee or removed from the group home within 30 days from the date of the notice from the group home provider, the group home provider shall notify the county placing agency and the department, in writing, of the county's failure to have the placement of the child approved or remove the child from the group home program.

(B) The group home provider shall make the notification required by subparagraph (A) within five days after the expiration of the 30-day approval or removal period.

(C) Any group home provider that fails to notify the county placing agency pursuant to subparagraph (A) shall be assessed a penalty in the amount of the AFDC-FC rate paid to the group home provider on behalf of the child commencing on the 31st day of placement and continuing until the county placing agency is notified.

(4) Any county placing agency that fails to have the placement of a child approved or to have the child removed from the group home program within 30 days shall be assessed a penalty in the amount of the state and federal financial participation in the AFDC-FC rate paid on behalf of the child commencing on the 31st day of placement and continuing until the child is removed.

(5) If an RCL 13 or RCL 14 group home provider discovers that it does not have the child's certification as required by clauses (i) and (ii) of subparagraph (B) of paragraph (3) and clauses (i) and (ii) of subparagraph (B) of paragraph (5), of subdivision (g) of Section 11462, as amended by Section 4 of Chapter 610 of the Statutes of 1991 for a child placed prior to July 1, 1992, the group home provider shall be subject to all requirements and penalties provided for in this section beginning July 1, 1992.

(i) The department shall develop regulations to reclassify a program RCL, to reduce a program rate, to recover overpayment, and to obtain payment of assessed penalties as provided in this section.

(j) (1) Nothing in this subparagraph shall prohibit a group home classified at RCL 13 or RCL 14 for purposes of the AFDC-FC program, from accepting private placements of children.

(2) In cases where a referral is not from a public agency and no public funding is involved, there shall be no requirement for public agency review or determination of need.

(3) Children subject to paragraphs (1) and (2) shall have been assessed as seriously emotionally disturbed, as defined in Section 5600.3 and subject to Section 1502.4 of the Health and Safety Code, by a licensed mental health professional, as defined in Sections 629 to 633, inclusive, of Title 9 of the California Code of Regulations.

(k) A child shall not be placed in a group home program classified at an RCL 13 or RCL 14 if the placement is paid for with county-only funds unless the child is assessed as seriously emotionally disturbed, as defined in Section 5600.3, subject to Section 1502.4 of the Health and Safety Code, by a licensed mental health professional, as defined in Sections 629 to 633, inclusive, of Title 9 of the California Code of Regulations.

(*l*) Subdivisions (c) to (j), inclusive, shall remain operative only until June 30, 1994.

(m) Notwithstanding subparagraph (B) of paragraph (8) of subdivision (g) of Section 11462, as amended by Section 4 of Chapter 610 of the Statutes of 1991, a group home provider shall be assessed a penalty in the amount of the difference between the rate paid and the standard rate for RCL 3 for the 1991–92 fiscal year for each month of placement for each child for which a program audit conducted on or after July 1, 1992, pursuant to Section 11466.2, finds that the child was not certified during the 1991–92 fiscal year, as required by clauses (i) and (ii) of subparagraph (A) of paragraph (1) of subdivision (b) of Section 1502.4 of the Health and Safety Code, and clauses (i) and (ii) of subparagraph (B) of paragraph (3) and clause (i) of subparagraph (B) of paragraph (5) of subdivision (g) of Section 11462, as amended by Section 4 of Chapter 610 of the Statutes of 1991. The program shall not be reclassified to a lower RCL for a violation of the requirements referred to in this paragraph.

(n) This section shall remain in effect only until July 1, 1994, and as of that date is repealed, unless a later enacted statute, which

becomes effective on or before July 1, 1994, deletes or extends that date.

SEC. 5. Section 11462.01 is added to Welfare and Institutions Code, to read:

11462.01. (a) Commencing July 1, 1994, a group home program shall be classified at RCL 13 or RCL 14 if the program meets all of the following requirements:

(1) The group home program is providing, or has proposed to provide, the level of care and services necessary to generate sufficient points in the ratesetting process to be classified at RCL 13 if the rate application is for RCL 13 or to be classified at RCL 14 if the rate application is for RCL 14.

(2) (A) (i) The group home provider shall agree not to accept for placement into a group home program AFDC-FC funded children, including voluntary placements and seriously emotionally disturbed children placed out-of-home pursuant to an individualized education program developed under Section 7572.5 of the Government Code, who have not been approved for placement by an interagency placement committee, as described by Section 4096. The approval shall be in writing and shall indicate that the interagency placement committee has determined the child is seriously emotionally disturbed, as defined by Section 5600.3 and subject to Section 1502.4 of the Health and Safety Code, and that the child needs the level of care provided by the group home.

(ii) For purposes of clause (i), group home providers who accept seriously emotionally disturbed children who are assessed and placed out-of-home pursuant to an individualized education program developed under Section 7572.5 of the Government Code shall be deemed to have met the interagency placement committee approval for placement requirements of clause (i) if the individualized education program assessment indicates that the child has been determined to be seriously emotionally disturbed, as defined in Section 5600.3 and subject to Section 1502.4 of the Health and Safety Code, and needs the level of care described in clause (i).

(B) (i) Nothing in this subdivision shall prevent the emergency placement of a child into a group home program prior to the determination by the interagency placement committee pursuant to subclause (i) of subparagraph (A) if a licensed mental health professional, as defined in the department's AFDC-FC ratesetting regulations, has evaluated, in writing, the child within 72 hours of placement, and determined the child to be seriously emotionally disturbed and in need of the care and services provided by the group home program.

(ii) The interagency placement committee shall, within 30 days of placement pursuant to clause (i), make the determination required by clause (i) of subparagraph (A).

(iii) If, pursuant to clause (ii), the placement is determined to be appropriate, the committee shall transmit the approval, in writing, to the county placing agency and the group home provider.

(iv) If, pursuant to clause (ii) the placement is determined not to be appropriate, the child shall be removed from the group home and referred to a more appropriate placement, as specified in subdivision (f).

(C) Commencing December 15, 1992, with respect to AFDC-FC funded children, only those children who are approved for placement by an interagency placement committee may be accepted by a group home under this subdivision.

(3) The group home program is certified by the State Department of Mental Health pursuant to Section 4096.5.

(b) The department shall not establish a rate for a group home requesting a program change to RCL 13 or RCL 14 unless the group home provider submits a recommendation from the host county or the primary placing county that the program is needed and that the provider is willing and capable of operating the program at the level sought. For purposes of this subdivision, "host county," "primary placing county," and "program change" mean the same as defined in the department's AFDC-FC ratesetting regulations.

(c) The effective date of rates set at RCL 13 or RCL 14 shall be the date that all the requirements are met, but not prior to July 1 of that fiscal year. Nothing in this section shall affect RCL 13 or RCL 14 ratesetting determinations in prior years.

(d) Any group home program that has been classified at RCL 13 or RCL 14 pursuant to the requirements of subdivision (a) shall immediately be reclassified at the appropriate lower RCL with a commensurate reduction in rate if either of the following occurs:

(1) The group home program fails to maintain the level of care and services necessary to generate the necessary number of points for RCL 13 or RCL 14, as required by paragraph (1) of subdivision (a), during any 90-day period. No average fiscal year RCL, as used in the department's AFDC-FC ratesetting regulations, or corrective action, as defined in the department's AFDC-FC ratesetting regulations, shall be used to determine the date at which that event has occurred.

(2) The group home program fails to maintain a certified mental health treatment program as required by paragraph (3) of subdivision (a).

(e) The interagency placement committee shall periodically review, but no less often than that required by current law, the placement of the child. If the committee determines that the child no longer needs, or is not benefiting from, placement in a RCL 13 or RCL 14 group home, the committee shall require the removal of the child and a new disposition.

(f) (1) (A) If, at any time subsequent to placement in an RCL 13 or RCL 14 group home program, the interagency placement committee determines either that the child is not seriously emotionally disturbed or is not in need of the care and services provided by the group home program, it shall notify, in writing, both the county placing agency and the group home provider within 10

days of the determination.

(B) The county placing agency shall notify the group home provider, in writing, within five days from the date of the notice from the committee, of the county's plan for removal of the child.

(C) The county placing agency shall remove the child from the group home program within 30 days from the date of the notice from the interagency placement committee.

(2) (A) If a county placing agency does not remove a child within 30 days from the date of the notice from the interagency placement committee, the group home provider shall notify the interagency placement committee and the department, in writing, of the county's failure to remove the child from the group home program.

(B) The group home provider shall make the notification required by subparagraph (A) within five days of the expiration of the 30-day removal period. If notification is made, a group home provider shall not be subject to an overpayment determination due to failure of the county placing agency to remove the child.

(3) Any county placing agency that fails to remove a child from a group home program under this paragraph within 30 days from the date of the notice from the interagency placement committee shall be assessed a penalty in the amount of the state and federal financial participation in the AFDC-FC rate paid on behalf of the child commencing on the 31st day and continuing until the child is removed.

(g) (1) If any RCL 13 or RCL 14 group home provider discovers that it does not have written approval for placement of any AFDC-FC funded child placed on or after December 15, 1992, from the interagency placement committee, it shall notify the county placing agency, in writing, and shall request the county to obtain approval from the interagency placement committee or remove the child from the group home program. A group home provider shall have 30 days from the child's first day of placement to discover the placement error and to notify the county placing agency.

(2) Any county placing agency that receives notification pursuant to paragraph (2) of subdivision (f) shall obtain approval for placement from the interagency placement committee or remove the child from the group home program within 30 days from the date of the notice from the group home provider. The program shall not be reclassified to a lower RCL for a violation of the provisions referred to in this paragraph.

(3) (A) If a county placing agency does not have the placement of a child approved by the interagency placement committee or removed from the group home within 30 days from the date of the notice from the group home provider, the group home provider shall notify the county placing agency and the department, in writing, of the county's failure to have the placement of the child approved or remove the child from the group home program.

(B) The group home provider shall make the notification required by subparagraph (A) within five days after the expiration

of the 30-day approval or removal period. If notification is made, a group home provider shall not be subject to an overpayment determination due to failure of the county placing agency to remove the child.

(C) Any group home provider that fails to notify the county placing agency pursuant to subparagraph (A) shall be assessed a penalty in the amount of the AFDC-FC rate paid to the group home provider on behalf of the child commencing on the 31st day of placement and continuing until the county placing agency is notified.

(4) Any county placing agency that fails to have the placement of a child approved or to have the child removed from the group home program within 30 days shall be assessed a penalty in the amount of the state and federal financial participation in the AFDC-FC rate paid on behalf of the child commencing on the 31st day of placement and continuing until the child is removed.

(h) The department shall develop regulations to obtain payment of assessed penalties as provided in this section. For audit purposes and the application of penalties for RCL 13 and RCL 14 programs, the department shall apply statutory provisions that were in effect during the period for which the audit was conducted.

(i) (1) Nothing in this subparagraph shall prohibit a group home classified at RCL 13 or RCL 14 for purposes of the AFDC-FC program, from accepting private placements of children.

(2) In cases where a referral is not from a public agency and no public funding is involved, there shall be no requirement for public agency review or determination of need.

(3) Children subject to paragraphs (1) and (2) shall have been assessed as seriously emotionally disturbed, as defined in Section 5600.3 and subject to Section 1502.4 of the Health and Safety Code, by a licensed mental health professional, as defined in Sections 629 to 633, inclusive, of Title 9 of the California Code of Regulations.

(j) A child shall not be placed in a group home program classified at an RCL 13 or RCL 14 if the placement is paid for with county-only funds unless the child is assessed as seriously emotionally disturbed, as defined in Section 5600.3, subject to Section 1502.4 of the Health and Safety Code, by a licensed mental health professional, as defined in Sections 629 to 633, inclusive, of Title 9 of the California Code of Regulations.

(k) This section shall become operative on July 1, 1994.

SEC. 6. The State Department of Social Services shall adopt regulations to implement this act in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of any emergency regulations that are filed with the Office of Administrative Law within one year or other reasonable time period up to 18 months after the effective date of this act shall be deemed an emergency necessary for the immediate preservation of the public peace, health, safety, or general welfare.

Regulations adopted pursuant to this section shall remain in effect for nor more than 120 days.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for continuity and stability of services to seriously emotionally disturbed children, it is necessary that this act take effect immediately.

CHAPTER 200

An act to amend Section 830.1 of the Penal Code, relating to peace officers, and making an appropriation therefor.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 830.1 of the Penal Code is amended to read:

830.1. (a) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, any chief of police, employed in that capacity, of a city, any police officer, employed in that capacity and appointed by the chief of police or the chief executive of the agency, of a city, any chief of police, or police officer of a district (including police officers of the San Diego Unified Port District Harbor Police) authorized by statute to maintain a police department, any marshal or deputy marshal of a municipal court, any constable or deputy constable, employed in that capacity, of a judicial district, any port warden or special officer of the Harbor Department of the City of Los Angeles, or any inspector or investigator employed in that capacity in the office of a district attorney, is a peace officer. The authority of these peace officers extends to any place in the state, as follows:

(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision which employs the peace officer.

(2) Where the peace officer has the prior consent of the chief of police, or person authorized by him or her to give consent, if the place is within a city or of the sheriff, or person authorized by him or her to give consent, if the place is within a county.

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

(b) Special agents and Attorney General investigators of the Department of Justice are peace officers, and those assistant chiefs,

deputy chiefs, chiefs, deputy directors, and division directors designated as peace officers by the Attorney General are peace officers. The authority of these peace officers extends to any place in the state where a public offense has been committed or where there is probable cause to believe one has been committed.

CHAPTER 201

An act to add Section 32100.7 to the Health and Safety Code, relating to hospital districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 32100.7 is added to the Health and Safety Code, to read:

32100.7. Notwithstanding Section 32100.01, the Board of Directors of Valley Health System, a local hospital district, may adopt a resolution to increase the number of members of its board of directors from five to seven without the necessity of a petition or approval thereof by voters residing within the district. The resolution shall become effective on the date and subject to any conditions specified in the resolution. The additional vacancies created by the expansion shall be filled by election. Notwithstanding Section 32100.02, if Valley Health System has duly adopted election of directors by zones pursuant to Section 32100.1, the additional vacancies created by expansion shall likewise be filled by election by zones. Notwithstanding Section 32100.1, the initial election to fill the additional vacancies may be at any one of the regular election dates provided for in Section 2500 of the Elections Code and the resolution shall designate the election date. The director elected at the election but receiving the lesser number of votes shall hold office until a successor elected at the next following general election takes office pursuant to Section 23556 of the Elections Code, and the director elected at the election receiving the greater number of votes shall hold office until a successor elected at the general election two years thereafter takes office. After the expiration of the initial terms as provided in the previous sentence, the terms of directors elected to fill each of the additional vacancies shall be as provided in Section 32100.

SEC. 2. Section 1 of this act shall become operative only if the executive officer of the Riverside County Local Agency Formation Commission executes a certificate of completion pursuant to Section 57200 of the Government Code for Riverside County Local Agency Formation Commission Case No. 94-16.

SEC. 3. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of unique circumstances with respect to the Valley Health System Hospital District. The facts constituting this necessity are the necessity for needed reorganization, the creation of zones, and boundary changes to enhance the efficiency and the services of the district.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for needed reorganization, the creation of zones, and boundary changes to occur, as soon as possible, to make the Valley Health System Hospital District more efficient and better able to provide services, this act must take effect immediately.

CHAPTER 202

An act to amend Section 146c of the Penal Code, relating to crimes.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 146c of the Penal Code is amended to read:

146c. Every person who designates any nongovernmental organization by any name, including, but not limited to any name that incorporates the term "peace officer," "police," or "law enforcement," that would reasonably be understood to imply that the organization is composed of law enforcement personnel, when, in fact, less than 80 percent of the voting members of the organization are law enforcement personnel or firefighters, active or retired, is guilty of a misdemeanor.

Every person who solicits another to become a member of any organization so named, of which less than 80 percent of the voting members are law enforcement personnel or firefighters, or to make a contribution thereto or subscribe to or advertise in a publication of the organization, or who sells or gives to another any badge, pin, membership card, or other article indicating membership in the organization, knowing that less than 80 percent of the voting members are law enforcement personnel or firefighters, active or retired, is guilty of a misdemeanor.

As used in this section, "law enforcement personnel" includes those mentioned in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, plus any other officers in any segment of law enforcement who are employed by the state or any of its political

subdivisions.

CHAPTER 203

An act to amend Sections 6401 and 6401.5 of the Business and Professions Code, relating to unlawful detainer assistants, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 6401 of the Business and Professions Code is amended to read:

6401. This chapter does not apply to any of the following:

(a) Any government employee who is acting in the course of his or her employment.

(b) A member of the State Bar of California, or his or her employee or agent, or an independent contractor while acting on behalf of a member of the State Bar.

(c) Any employee of a nonprofit, tax-exempt corporation who assists clients free of charge.

(d) A licensed real estate broker or licensed real estate salesperson, as defined in Chapter 3 (commencing with Section 10130) of Part 1 of Division 4, who acts pursuant to subdivision (b) of Section 10131 on an unlawful detainer claim as defined in subdivision (b) of Section 6400, and who is a party to the unlawful detainer action.

SEC. 2. Section 6401.5 of the Business and Professions Code is amended to read:

6401.5. Nothing in this chapter shall be construed to sanction, authorize, or encourage the practice of law by nonlawyers. Registration under this chapter, or an exemption from registration, shall not serve in any way to insulate or immunize any person from prosecution pursuant to Section 6125, 6126, or 6127.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To avoid interference with the ability of licensed real estate brokers and salespersons to participate in unlawful detainer proceedings, it is necessary that this act take effect immediately.

CHAPTER 204

An act to add Section 1363.5 to the Civil Code, relating to common interest developments.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 1363.5 is added to the Civil Code, to read:

1363.5. (a) The articles of incorporation of any common interest development association filed with the Secretary of State on or after January 1, 1995, shall include a statement that shall be in addition to the statement of purposes of the corporation, and that (1) identifies the corporation as an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act, (2) states the business or corporate office of the association, if any, and, if the office is not on the site of the common interest development, states the nine-digit ZIP Code, front street, and nearest cross street for the physical location of the common interest development, and (3) states the name and address of the association's managing agent, as defined in Section 1363.1, if any.

(b) The statement of principal business activity contained in the annual statement filed by an incorporated association with the Secretary of State pursuant to Section 1502 of the Corporations Code shall also contain the statement specified in subdivision (a).

CHAPTER 205

An act to add Section 375.5 to the Water Code, relating to water.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 375.5 is added to the Water Code, to read:

375.5. (a) A public entity, as defined by Section 375, may undertake water conservation and public education programs in conjunction with school districts, public libraries, or any other public entity.

(b) A public entity may take into account any programs undertaken pursuant to this section in a rate structure design implemented pursuant to Section 375.

(c) The Legislature finds and declares that a program undertaken pursuant to this section is in the public interest, serves a public purpose, and will promote the health, welfare, and safety of the

people of the state.

CHAPTER 206

An act relating to local agency costs, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. The sum of twenty-four million two hundred fifty-two thousand dollars ($24,252,000) is hereby appropriated from the General Fund to the Controller for the payment of claims for reimbursement of state-mandated costs, according to the following schedule:

(a) The sum of twenty-two million eight hundred forty-one thousand dollars ($22,841,000) for the reimbursement of claims of school districts, as specified, to be allocated as follows:

(1) Six hundred forty-five thousand dollars ($645,000) for the payment of claims of school districts seeking reimbursable one-time state-mandated costs incurred pursuant to Chapter 416 of the Statutes of 1991 (Iraq-Kuwait Military Duty), for the 1990–91 and 1991–92 fiscal years.

(2) Four million nine hundred forty-nine thousand dollars ($4,949,000) for the payment of claims of school districts seeking reimbursable state-mandated costs incurred pursuant to Chapter 818 of the Statutes of 1991 (AIDS Prevention Instruction), for January 1, 1992, to June 30, 1992, and the 1992–93, 1993–94, and 1994–95 fiscal years.

(3) Three million nine hundred thousand dollars ($3,900,000) for the payment of claims of school districts seeking reimbursable state-mandated costs incurred pursuant to Chapter 1675 of the Statutes of 1984 (School Testing-Physical Fitness), for the 1990–91 through the 1994–95 fiscal years.

(4) Five million one hundred ninety-one thousand dollars ($5,191,000) for the payment of claims of school districts seeking reimbursable state-mandated costs that were deferred by the Legislature for costs incurred pursuant to Chapter 1659 of the Statutes of 1984 (Emergency Procedures), for the 1985–86 through 1993–94 fiscal years.

(5) Two million eight hundred six thousand dollars ($2,806,000) for the payment of claims of school districts seeking reimbursable state-mandated costs that were deferred by the Legislature for costs incurred pursuant to Chapter 498 of the Statutes of 1983 (Model Curriculum Standards), for the 1988–89 through 1992–93 fiscal years.

(6) Nine hundred fifty thousand dollars ($950,000) for the payment of claims of school districts seeking one-time reimbursable state-mandated costs that were deferred by the Legislature for costs incurred pursuant to Chapter 498 of the Statutes of 1983 (Exam Proctors), for the 1987–88 and 1988–89 fiscal years.

(7) Four million four hundred thousand dollars ($4,400,000) for the payment of claims of school districts seeking reimbursable state-mandated costs that were deferred by the Legislature for costs incurred pursuant to Chapter 1607 of the Statutes of 1984, Chapter 78 of the Statutes of 1988, Chapter 1457 of the Statutes of 1989 (School Crimes Statistics Reporting and Validation), for the 1988–89 through 1992–93 fiscal years.

(b) One million four hundred eleven thousand dollars ($1,411,000) to the State Mandates Claims Fund, for the payment of claims from local agencies and school districts, including, but not limited to, Chapter 1088 of the Statutes of 1988 (Search Warrant for AIDS), and Chapter 1171 of the Statutes of 1989 (Cancer Presumption-Peace Officers).

(c) All amounts appropriated in subdivision (a) are for the purposes of meeting the funding guarantee for education programs pursuant to Section 8 of Article XVI of the California Constitution.

(d) If any of the scheduled amounts in subdivision (a) are insufficient to provide full reimbursement of costs, the Controller may, upon notifying the Director of Finance in writing, augment those deficient amounts from the unencumbered balance of any other scheduled amounts therein, except that unencumbered balances in any paragraph of subdivision (a) may be used to augment deficient amounts only in those items. No order may be issued pursuant to this provision unless written notification of necessity is provided to the chairperson of the committee in each house which considers appropriations and the Chairperson of the Joint Legislative Budget Committee or his or her designee.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to settle local government claims against the state for mandated costs and end hardship to local governments, it is necessary for this act to take effect immediately.

CHAPTER 207

An act to amend Section 24953 of, and to add Sections 676.5, 25278, and 25281 to, the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 15, 1998. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 676.5 is added to the Vehicle Code, to read:

676.5. A "water tender vehicle" is a vehicle designed to carry not less than 1,500 gallons of water, and used primarily for transporting and delivering water to be applied by other vehicles or pumping equipment at fire emergency scenes.

SEC. 2. Section 24953 of the Vehicle Code is amended to read:

24953. (a) Any turn signal system used to give a signal of intention to turn right or left shall project a flashing white or amber light visible to the front and a flashing red or amber light visible to the rear.

(b) Side-mounted turn signal lamps projecting a flashing amber light to either side may be used to supplement the front and rear turn signals. Side-mounted turn signal lamps mounted to the rear of the center of the vehicle may project a flashing red light no part of which shall be visible from the front.

(c) In addition to any required turn signal lamps, any vehicle may be equipped with supplemental rear turn signal lamps mounted to the rear of the rearmost portion of the driver's seat in its rearmost position.

(d) In addition to any required or authorized turn signal lamps, any vehicle may be equipped with supplemental rear turn signal lamps that are mounted on, or are an integral portion of, the outside rearview mirrors, so long as the lamps flash simultaneously with the rear turn signal lamps, the light emitted from the lamps is projected only to the rear of the vehicle and is not visible to the driver under normal operating conditions, and the lamps do not project a glaring light.

SEC. 3. Section 25278 is added to the Vehicle Code, to read:

25278. Any vehicle owned or operated by a land surveyor or civil engineer licensed to practice in the this state may display flashing amber warning lights to the front, sides, or rear, if the vehicle is engaged in any phase of a project that requires surveying or surveying related activities to be performed on a highway, or in the vicinity of a highway, and the vehicle is parked on the highway or moving at a speed lower than the normal flow of traffic. The use of, or absence of, amber warning lights as authorized in this section shall not serve as the basis for any civil action, a defense to a civil action, or establish negligence as a matter of law or negligence per se for

comparative fault purposes.

SEC. 4. Section 25281 is added to the Vehicle Code, to read:

25281. A privately owned or operated water tender vehicle, when used exclusively for contract emergency services provided to any public agency, may display flashing amber warning lights to the front, sides, or rear of the vehicle when necessarily parked on a highway or other public road, blocking or partially blocking a highway or other public road, traveling at a speed slower than the normal flow of traffic, or crossing or entering a highway or other public road. The flashing amber lights shall not be displayed when the water tender vehicle is traveling to or from an emergency at the normal speed and flow of traffic, except when the vehicle is traveling in escort with a fire engine or other authorized emergency vehicle. The lights shall be covered with an opaque material when not being displayed.

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

To improve visibility and warning of potential dangers on the highways, it is necessary that this act take effect immediately.

CHAPTER 208

An act to add Section 19413.1 to the Business and Professions Code, relating to horses.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 19413.1 is added to the Business and Professions Code, to read:

19413.1. "Prohibited drug substance" is any drug substance, medication, or chemical, whether natural or synthetic, or a metabolite or analogue thereof, foreign to the horse, whose use is not expressly authorized by the board. This includes, but is not limited to, any substance determined to be a stimulant, depressant, local anesthetic, or narcotic, or any drug, regardless of how harmless or innocuous it might otherwise be, which could interfere with the detection of any prohibited drug. "Prohibited drug substance" includes any substance not approved for use in the United States, including, but not limited to, any drug or substance available in a country outside the United States, any controlled substance listed in Part 1308 of Title 21 of the Code of Federal Regulations, and any substance the approval of which has been withdrawn.

CHAPTER 209

An act to amend Section 15333.3 of the Government Code, relating to economic development.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 15333.3 of the Government Code is amended to read:

15333.3. (a) The Western Commercial Space Center, a nonprofit corporation, is designated as the California Spaceport Authority to foster the development of support and other unique services required for the development of commercial launch, manufacturing, and academic and research operations related to space flight.

(b) The California Spaceport Authority shall be an official recipient of federal grants for programs other than for-profit commercial activities, and which may include space related studies, services, infrastructure improvements and modernization, and defense transition programs to the extent permitted by federal law. Any other entity eligible under federal law may also receive federal grant funds.

(c) The authority shall be an advocate in support of commercial space businesses, facilities, programs, developments, alterations, modifications, and other actions impacting development of commercial space business by state agencies and commissions. To the extent authorized under the Internal Revenue Code, the authority shall define and promote regulatory changes throughout the state that will enhance the development of commercial space business. To the extent authorized under the Internal Revenue Code, the authority shall report on the economic impact of commercial space business in terms of jobs to the Legislature and other state agencies and commissions developing laws, regulations, decisions, or determinations affecting the creation of commercial space businesses throughout the state.

(d) In accordance with the California Defense Conversion Act of 1993 (Article 3.6 (commencing with Section 15346)) and with the concurrence of the California Defense Conversion Council, the authority shall coordinate with regional technology alliances in the development of commercial space businesses to achieve the optimum utilization of defense conversion and other federal and state grant funds.

The authority shall evaluate the benefits of establishing a Central Coast Regional Technology Alliance around the California Commercial Spaceport being built at Vandenberg Air Force Base, and report its recommendation to the California Defense Conversion Council.

CHAPTER 210

An act to amend Section 2052 of the Public Contract Code, relating to public contracts.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 2052 of the Public Contract Code is amended to read:

2052. (a) All awarding departments and local agencies shall accept a certification by any participating state agency whose certification criteria complies with Part 23 of Title 49 of the Code of Federal Regulations. All awarding departments shall, and local agencies may, accept a certification by any participating local agency whose certification criteria complies with Part 23. Those participating state or local agency certifications shall be deemed sufficient to qualify minority, women, and disadvantaged business enterprises for purposes of contracts that are fully or partially funded by the federal government, contracts fully or partially funded by all state agencies, and contracts fully or partially funded by all local agencies, as defined in Part 3 (commencing with Section 20100).

(b) All awarding departments and local agencies shall accept the certification of a minority, women, or disadvantaged business enterprise made by a participating state agency as valid status of that enterprise, with respect to the identities of the persons certified as having ownership and control of the business enterprise, when awarding contracts to minority, women, and disadvantaged business enterprises. All awarding departments shall, and local agencies may, accept this certification when made by a participating local agency. No awarding department shall require a business enterprise, which has complied with the certification criteria of a participating state or local agency, to comply with any other certification process for certifying minority, women, and disadvantaged business enterprises. However, a participating local agency may impose additional conditions for certification of a business enterprise concerning its status as a minority, women, or disadvantaged business enterprise relating to ethnicity, business size, and business location for participation in local programs.

CHAPTER 211

An act to amend Sections 7151.5 and 7152.5 of the Health and Safety Code, relating to anatomical gifts.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 7151.5 of the Health and Safety Code is amended to read:

7151.5. (a) Except as provided in Section 7152, the coroner or medical examiner may release and permit the removal of a part from a body within that official's custody, for transplantation, therapy, or reconditioning, if all of the following occur:

(1) The official has received a request for the part from a hospital, physician, surgeon, or procurement organization or, in the case of a pacemaker, from a person who reconditions pacemakers.

(2) A reasonable effort has been made to locate and inform persons listed in subdivision (a) of Section 7151 of their option to make, or object to making, an anatomical gift. Except in the case of corneal material to be used for the purpose of transplantation or where the useful life of the part does not permit, a reasonable effort shall be deemed to have been made when a search for the persons has been underway for at least 12 hours.

(3) The official does not know of a refusal or contrary indication by the decedent or objection by a person having priority to act as listed in subdivision (a) of Section 7151.

(4) The removal will be by a physician, surgeon, or technician; but in the case of eyes, by one of them or by an enucleator.

(5) The removal will not interfere with any autopsy or investigation.

(6) The removal will be in accordance with accepted medical standards.

(7) Cosmetic restoration will be done, if appropriate.

(b) Except as provided in Section 7152, if the body is not within the custody of the coroner or medical examiner, a hospital may release and permit the removal of a part from a body if the hospital, after a reasonable effort has been made to locate and inform persons listed in subdivision (a) of Section 7151 of their option to make, or object to the making, an anatomical gift, determines and certifies that the persons are not available. A search for the persons listed in subdivision (a) of Section 7151 may be initiated in anticipation of death, but, except in the case of corneal material to be used for the purpose of transplantation or where the useful life of the part does not permit, the determination may not be made until the search has been underway for at least 12 hours. The search shall include a check of local police missing persons records, examination of personal

effects, and the questioning of any persons visiting the decedent before his or her death or in the hospital, accompanying the decedent's body, or reporting the death, in order to obtain information that might lead to the location of any persons listed in subdivision (a) of Section 7151.

(c) Except as provided in Section 7152, if the body is not within the custody of the coroner or medical examiner or a hospital, the local public health officer may release and permit the removal of any part from a body in the local public health officer's custody for transplantation, therapy, or reconditioning if the requirements of subdivision (a) are met.

(d) An official or hospital releasing and permitting the removal of a part shall maintain a permanent record of the name of the decedent, the person making the request, the date and purpose of the request, the part requested, and the person to whom it was released.

SEC. 2. Section 7152.5 of the Health and Safety Code is amended to read:

7152.5. (a) If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital shall comply with the protocol developed pursuant to Section 7184.

(b) The following persons shall make a reasonable search for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

(1) A law enforcement officer finding an individual who the officer believes is dead or near death.

(2) A hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information.

(3) Ambulance or emergency medical personnel, upon providing emergency medical services to an individual, when it appears that death of that individual may be imminent. This requirement shall be secondary to the requirement that ambulance or emergency medical personnel provide emergency medical services to the patient.

(c) If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by paragraph (1) of subdivision (b), and the individual or body to whom it relates is taken to a hospital, the hospital shall be notified of the contents and the document or other evidence shall be sent to the hospital.

(d) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made pursuant to subdivision (a) of Section 7151 or a release and removal of a part has been permitted pursuant to Section 7151.5, or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

(e) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but is subject to appropriate administrative sanctions.

CHAPTER 212

An act to add Section 6524 to the Government Code, relating to joint exercise of powers.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 6524 is added to the Government Code, to read:

6524. Notwithstanding any other provision of this chapter, a private, nonprofit children's hospital in a county of the third class may enter into a joint powers agreement with any public agency, as defined in Section 6500.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances facing the Children's Hospital and Health Center of San Diego as it works with San Diego and Imperial Counties, and other adjacent counties, in moving towards a comprehensive and cost-effective system of managed care for children.

CHAPTER 213

An act to amend Section 654.2 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 654.2 of the Welfare and Institutions Code is amended to read:

654.2. (a) If a petition has been filed by the prosecuting attorney to declare a minor a ward of the court under Section 602, the court may, without adjudging the minor a ward of the court and with the consent of the minor and the minor's parents or guardian, continue any hearing on a petition for six months and order the minor to participate in a program of supervision as set forth in Section 654. If

the probation officer recommends additional time to enable the minor to complete the program, the court at its discretion may order an extension. Fifteen days prior to the final conclusion of the program of supervision undertaken pursuant to this section, the probation officer shall submit to the court a followup report of the minor's participation in the program. The minor and the minor's parents or guardian shall be ordered to appear at the conclusion of the six-month period and at the conclusion of each additional three-month period. If the minor successfully completes the program of supervision, the court shall order the petition be dismissed. If the minor has not successfully completed the program of supervision, proceedings on the petition shall proceed no later than 12 months from the date the petition was filed.

(b) If the minor is eligible for Section 654 supervision, and the probation officer believes the minor would benefit from a program of supervision pursuant to this section, the probation officer may, in referring the affidavit described in Section 653.5 to the prosecuting attorney, recommend informal supervision as provided in this section.

CHAPTER 214

An act to amend Section 2891 of the Public Utilities Code, relating to public utilities.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 2891 of the Public Utilities Code is amended to read:

2891. (a) No telephone or telegraph corporation shall make available to any other person or corporation, without first obtaining the residential subscriber's consent, in writing, any of the following information:

(1) The subscriber's personal calling patterns, including any listing of the telephone or other access numbers called by the subscriber, but excluding the identification to the person called of the person calling and the telephone number from which the call was placed, subject to the restrictions in Section 2893, and also excluding billing information concerning the person calling which federal law or regulation requires a telephone corporation to provide to the person called.

(2) The residential subscriber's credit or other personal financial information, except when the corporation is ordered by the commission to provide this information to any electrical, gas, heat, telephone, telegraph, or water corporation, or centralized credit

check system, for the purpose of determining the creditworthiness of new utility subscribers.

(3) The services which the residential subscriber purchases from the corporation or from independent suppliers of information services who use the corporation's telephone or telegraph line to provide service to the residential subscriber.

(4) Demographic information about individual residential subscribers, or aggregate information from which individual identities and characteristics have not been removed.

(b) Any residential subscriber who gives his or her written consent for the release of one or more of the categories of personal information specified in subdivision (a) shall be informed by the telephone or telegraph corporation regarding the identity of each person or corporation to whom the information has been released, upon written request. The corporation shall notify every residential subscriber of the provisions of this subdivision whenever consent is requested pursuant to this subdivision.

(c) Any residential subscriber who has, pursuant to subdivision (b), given written consent for the release of one or more of the categories of personal information specified in subdivision (a) may rescind this consent upon submission of a written notice to the telephone or telegraph corporation. The corporation shall cease to make available any personal information about the subscriber, within 30 days following receipt of notice given pursuant to this subdivision.

(d) This section does not apply to any of the following:

(1) Information provided by residential subscribers for inclusion in the corporation's directory of subscribers.

(2) Information customarily provided by the corporation through directory assistance services.

(3) Postal ZIP Code information.

(4) Information provided under supervision of the commission to a collection agency by the telephone corporation exclusively for the collection of unpaid debts.

(5) Information provided to an emergency service agency responding to a 911 telephone call or any other call communicating an imminent threat to life or property.

(6) Information provided to a law enforcement agency in response to lawful process.

(7) Information which is required by the commission pursuant to its jurisdiction and control over telephone and telegraph corporations.

(8) Information transmitted between telephone or telegraph corporations pursuant to the furnishing of telephone service between or within service areas.

(9) Information required to be provided by the corporation pursuant to rules and orders of the commission or the Federal Communications Commission regarding the provision over telephone lines by parties other than the telephone and telegraph

corporations of telephone or information services.

(10) The name and address of the lifeline customers of a telephone corporation provided by that telephone corporation to a public utility for the sole purpose of low-income ratepayer assistance outreach efforts. The telephone corporation receiving the information request pursuant to this paragraph may charge the requesting utility for the cost of the search and release of the requested information. The commission, in its annual low-income ratepayer assistance report, shall assess whether this information has been helpful in the low-income ratepayer assistance outreach efforts.

(e) Every violation is a grounds for a civil suit by the aggrieved residential subscriber against the telephone or telegraph corporation and its employees responsible for the violation.

(f) For purposes of this section, "access number" means a telex, teletex, facsimile, computer modem, or any other code which is used by a residential subscriber of a telephone or telegraph corporation to direct a communication to another subscriber of the same or another telephone or telegraph corporation.

CHAPTER 215

An act to add Section 828.3 to the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 828.3 is added to the Welfare and Institutions Code, to read:

828.3. Notwithstanding any other provision of law, information relating to the taking of a minor into custody on the basis that he or she has committed a crime against the property, students, or personnel of a school district or a finding by the juvenile court that the minor has committed such a crime may be exchanged between law enforcement personnel, the school district superintendent, and the principal of a public school in which the minor is enrolled as a student if the offense was against the property, students, or personnel of that school.

CHAPTER 216

An act to amend Section 12001 of, and to add and repeal Section 12001.5 of, the Food and Agricultural Code, relating to pest control.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 12001 of the Food and Agricultural Code is amended to read:

12001. No person shall act, or offer to act, as an agricultural pest control adviser without first having secured an agricultural pest control adviser license from the director. Officials of federal, state, and county departments of agriculture and the University of California personnel engaged in official duties relating to agricultural use are exempt from this section if any recommendation by any of these persons as to a specific application on a specific parcel is made in writing. Officials of districts formed pursuant to Chapter 4 (commencing with Section 5780) of Division 5 of the Public Resources Code are exempt from this section until July 1, 1995, if any recommendation by any of these persons as to a specific application on a specific parcel is in writing.

SEC. 2. Section 12001.5 is added to the Food and Agricultural Code, to read:

12001.5. (a) The director may adopt, by regulation, alternative minimum criteria based on education or technical experience for applicants for an agricultural pest control adviser license. These alternative minimum qualifications shall apply only to persons who, at the time of license application, are officials of districts formed pursuant to Chapter 4 (commencing with Section 5780) of Division 5 of the Public Resources Code.

(b) This section shall become inoperative on July 1, 1995, and, as of January 1, 1996, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1996, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 217

An act to amend Section 653t of the Penal Code, relating to crimes.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 653t of the Penal Code is amended to read:

653t. (a) A person commits a public offense if the person knowingly and maliciously interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over an amateur or a citizen's band radio frequency, the purpose of which communication is to inform or inquire about an emergency.

(b) In this section, "emergency" means a condition or circumstance in which an individual is or is reasonably believed by the person transmitting the communication to be in imminent danger of serious bodily injury, in which property is or is reasonably believed by the person transmitting the communication to be in imminent danger of extensive damage or destruction, or in which that injury or destruction has occurred and the person transmitting is attempting to summon assistance.

(c) A violation of this section is a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000), by imprisonment in a county jail not to exceed six months, or by both, unless, as a result of the commission of the offense, serious bodily injury or property loss in excess of ten thousand dollars ($10,000) occurs, in which event the offense is a felony.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 218

An act to amend Section 4035.1 of the Business and Professions Code, relating to pharmacy.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 4035.1 of the Business and Professions Code is amended to read:

4035.1. "Hospital pharmacy" means and includes a pharmacy, licensed by the board, located within any hospital, institution or establishment that maintains and operates organized facilities for the diagnosis, care and treatment of human illnesses to which persons may be admitted for overnight stay and that meets all of the requirements of this chapter and the rules and regulations of the board.

When, in the opinion of the board, a high standard of patient safety, consistent with good patient care, can be provided by the licensure of a pharmacy within a hospital, that does not meet all of the requirements for licensure as a hospital pharmacy, the board may waive any requirements pertaining to minimum equipment, minimum space, sanitary facilities, waiting area, or any other licensing requirements, provided that when the waiver of any of the above requirements is granted by the board the pharmaceutical services to be rendered by this pharmacy shall be limited to the furnishing of drugs to patients registered for treatment in the hospital, whether or not they are actually staying in the hospital, or to emergency cases under treatment in the hospital.

Notwithstanding any other provision of this section, a hospital pharmacy may be located outside of the hospital, in another physical plant that is regulated under a hospital's consolidated license issued pursuant to Section 1250.8 of the Health and Safety Code. As a condition of licensure by the board, the pharmacy in another physical plant shall provide pharmaceutical services only to registered hospital patients who are on the premises of the same physical plant in which the pharmacy is located. The pharmacy services provided shall be directly related to the services or treatment plan administered in the physical plant. Nothing in this paragraph shall be construed to restrict or expand the services that a hospital pharmacy may provide.

CHAPTER 219

An act to amend Section 798.80 of the Civil Code, relating to mobilehomes.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 798.80 of the Civil Code is amended to read:

798.80. (a) Not less than 30 days nor more than one year prior to an owner of a mobilehome park entering into a written listing agreement with a licensed real estate broker, as defined in Article 1 (commencing with Section 10130) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, for the sale of the park, or offering to sell the park to any party, the owner shall provide written notice of his or her intention to sell the mobilehome park by first-class mail or by personal delivery to the president, secretary, and treasurer of any resident organization formed by homeowners in the mobilehome park as a nonprofit corporation, pursuant to Section 23701v of the Revenue and Taxation Code, stock cooperative corporation, or other entity for purposes of converting the mobilehome park to condominium or stock cooperative ownership interests and for purchasing the mobilehome park from the management of the mobilehome park. An offer to sell a park shall not be construed as an offer under this subdivision unless it is initiated by the park owner or agent.

(b) An owner of a mobilehome park shall not be required to comply with subdivision (a) unless the following conditions are met:

(1) The resident organization has first furnished the park owner or park manager a written notice of the name and address of the president, secretary, and treasurer of the resident organization to whom the notice of sale shall be given.

(2) The resident organization has first notified the park owner or manager in writing that the park residents are interested in purchasing the park. The initial notice by the resident organization shall be made prior to a written listing or offer to sell the park by the park owner, and the resident organization shall give subsequent notice once each year thereafter that the park residents are interested in purchasing the park.

(3) The resident organization has furnished the park owner or park manager a written notice, within five days, of any change in the name or address of the officers of the resident organization to whom the notice of sale shall be given.

(c) Nothing in this section affects the validity of title to real property transferred in violation of this section, although a violation shall subject the seller to civil action pursuant to Article 8 (commencing with Section 798.84) by homeowner residents of the

park or the resident organization.

(d) Nothing in this section affects the ability of a licensed real estate broker, as defined in Article 1 (commencing with Section 10130) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, to collect a commission pursuant to an executed contract between the broker and the mobilehome park owner.

(e) Subdivision (a) does not apply to any of the following:

(1) Any sale or other transfer by a park owner who is a natural person to any relation specified in Section 6401 or 6402 of the Probate Code.

(2) Any transfer by gift, devise, or operation of law.

(3) Any transfer by a corporation to an affiliate. As used in this paragraph, "affiliate" means any shareholder of the transferring corporation, any corporation or entity owned or controlled, directly or indirectly, by the transferring corporation, or any other corporation or entity controlled, directly or indirectly, by any shareholder of the transferring corporation.

(4) Any transfer by a partnership to any of its partners.

(5) Any conveyance resulting from the judicial or nonjudicial foreclosure of a mortgage or deed of trust encumbering a mobilehome park or any deed given in lieu of such a foreclosure.

(6) Any sale or transfer between or among joint tenants or tenants in common owning a mobilehome park.

(7) The purchase of a mobilehome park by a governmental entity under its powers of eminent domain.

CHAPTER 220

An act to amend Section 2825 of the Fish and Game Code, relating to conservation.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 2825 of the Fish and Game Code is amended to read:

2825. (a) The department may prepare nonregulatory guidelines for the development and implementation of natural community conservation plans. The guidelines are exempt from Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code. The guidelines may include, but are not limited to, all of the following:

(1) Defining the scope of a conservation planning area.

(2) Determining conservation standards, guidelines, and objectives for the planning area.

(3) Appointing one or more advisory committees to review and

make recommendations regarding the preparation and implementation of natural community conservation plans. The advisory committee membership may include representation from the local community near the plan area.

(4) Coordinating with local, state, and federal agencies, including the Trade and Commerce Agency.

(5) Incorporating public input.

(6) Ensuring compatibility with the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).

(7) Obtaining approval of the natural community conservation plan by the department.

(8) Provisions for implementation of the plan.

(9) Monitoring and reporting on plan implementation.

(10) Amending the plan consistent with the initial intent of the plan.

(b) Nothing in this chapter exempts projects proposed in a natural community conservation planning area from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(c) Natural community conservation plans, as appropriate, shall be implemented pursuant to Section 2081.

(d) To the extent practicable, implementation of natural community conservation plans shall use the services of either the California Conservation Corps or local community conservation corps.

CHAPTER 221

An act to amend Sections 22522 and 42001.5 of, and add Sections 22511.57 and 22652.6 to, the Vehicle Code, relating to vehicles.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 22511.57 is added to the Vehicle Code, to read:

22511.57. Local authorities may, by ordinance or resolution, prohibit or restrict the parking or standing of a vehicle on streets or highways or from a disabled person's parking stall or space of a privately or publicly owned or operated offstreet parking facility within their jurisdiction when the vehicle displays, in order to obtain special parking privileges, a disabled placard issued pursuant to Section 22511.55, and the Department of Motor Vehicles record for the identification number assigned to the placard indicates that the card has been reported as lost or stolen, or was issued to a person who has been reported as being deceased for a period exceeding 60 days.

SEC. 2. Section 22522 of the Vehicle Code is amended to read:

22522. No person shall park a vehicle within three feet of any sidewalk access ramp constructed adjacent to a crosswalk so as to be accessible to and usable by the physically disabled, if the area adjoining the ramp is designated by either a sign or red paint.

SEC. 3. Section 22652.6 is added to the Vehicle Code, to read:

22652.6. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any regularly employed and salaried employee engaged in directing traffic or enforcing parking laws and regulations of a city or county, may remove any vehicle parked or standing on the streets or highways or from a stall or space of a privately or publicly owned or operated offstreet parking facility within the jurisdiction of the city or county when the vehicle is in violation of a local ordinance or resolution adopted pursuant to Section 22511.57.

SEC. 4. Section 42001.5 of the Vehicle Code is amended to read:

42001.5. Every person convicted of an infraction for a violation of subdivision (i) or (*l*) of Section 22500, Section 22507.8, or Section 22522 shall be punished by a fine of not less than two hundred fifty dollars ($250). No part of any fine imposed shall be suspended, except the court may suspend that portion of the fine above one hundred dollars ($100) for a violation of subdivision (i) or (*l*) of Section 22500 or of Section 22522, and the court may suspend the imposition of the fine for a conviction for a violation of Section 22507.8 if the person convicted possessed at the time of the offense, but failed to display, a valid distinguishing license plate or placard issued pursuant to Section 22511.5. The fine may be paid in installments if the court determines that the defendant is unable to pay the entire amount in one payment.

SEC. 5. This act shall become operative on July 1, 1995.

CHAPTER 222

An act to amend Section 2241.5 of the Business and Professions Code, relating to medicine.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 2241.5 of the Business and Professions Code is amended to read:

2241.5. (a) Notwithstanding any other provision of law, a physician and surgeon may prescribe or administer controlled substances to a person in the course of the physician and surgeon's treatment of that person for a diagnosed condition causing intractable pain.

(b) "Intractable pain," as used in this section, means a pain state in which the cause of the pain cannot be removed or otherwise treated and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts including, but not limited to, evaluation by the attending physician and surgeon and one or more physicians and surgeons specializing in the treatment of the area, system, or organ of the body perceived as the source of the pain.

(c) No physician and surgeon shall be subject to disciplinary action by the board for prescribing or administering controlled substances in the course of treatment of a person for intractable pain.

(d) This section shall not apply to those persons being treated by the physician and surgeon for chemical dependency because of their use of drugs or controlled substances.

(e) This section shall not authorize a physician and surgeon to prescribe or administer controlled substances to a person the physician and surgeon knows to be using drugs or substances for nontherapeutic purposes.

(f) This section shall not affect the power of the board to deny, revoke, or suspend the license of any physician and surgeon who does any of the following:

(1) Prescribes or administers a controlled substance or treatment that is nontherapeutic in nature or nontherapeutic in the manner the controlled substance or treatment is administered or prescribed or is for a nontherapeutic purpose in a nontherapeutic manner.

(2) Fails to keep complete and accurate records of purchases and disposals of substances listed in the California Controlled Substances Act, or of controlled substances scheduled in, or pursuant to, the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall keep records of his or her purchases and disposals of these drugs, including the date of purchase, the date and records of the sale or disposal of the drugs by the physician and surgeon, the name and address of the person receiving the drugs, and the reason for the disposal of or the dispensing of the drugs to the person and shall otherwise comply with all state recordkeeping requirements for controlled substances.

(3) Writes false or fictitious prescriptions for controlled substances listed in the California Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(4) Prescribes, administers, or dispenses in a manner not consistent with public health and welfare controlled substances listed in the California Controlled Substance Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(5) Prescribes, administers, or dispenses in violation of either Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code or this chapter.

(g) Nothing in this section shall be construed to prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon, as authorized pursuant to Sections 809.05, 809.4, and 809.5.

CHAPTER 223

An act to amend and renumber Section 27202 of, to add Section 27202 to, and to repeal and add Article 2 (commencing with Section 27231) to Chapter 6 of Part 3 of Division 12 of, the Food and Agricultural Code, relating to food.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 27202 of the Food and Agricultural Code is amended and renumbered to read:

27203. "Poultry meat" means the carcass of poultry or any part of the carcass. It does not include live poultry or manufactured products in which poultry is not the main ingredient.

SEC. 2. Section 27202 is added to the Food and Agricultural Code, to read:

27202. "Poultry" means domesticated fowl that is intended for use for human food. It includes chickens, game hens, turkeys, ducks, geese, and other domesticated birds.

SEC. 3. Article 2 (commencing with Section 27231) of Chapter 6 of Part 3 of Division 12 of the Food and Agricultural Code is repealed.

SEC. 4. Article 2 (commencing with Section 27231) is added to Chapter 6 of Part 3 of Division 12 of the Food and Agricultural Code, to read:

Article 2. Marks and Labels

27231. Before being offered for retail sale in this state, poultry meat of poultry that was grown or raised in this state may be advertised, labeled, described, sold, marked, or otherwise held out, with the words "California grown," or other similar language indicating that the meat is from California grown or raised poultry.

27232. (a) Poultry meat of poultry that was not grown or raised in this state and packages of that meat shall not be advertised, labeled, described, sold, marked, or otherwise held out as "California grown," or in any way as to imply that the meat is from California grown or raised poultry.

(b) It is unlawful for any person to violate this section.

(c) A violation of this section constitutes an unfair and unlawful business act or practice under Section 17200 of the Business and

Professions Code, and a false or misleading statement under Section 17500 of the Business and Professions Code.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 224

An act to amend Sections 667.9, 999e, 1203.055, 1203.06, 1203.075, 1203.09, 1601, 3420, and 13853 of the Penal Code, and to amend Sections 6500 and 8103 of the Welfare and Institutions Code, relating to sentencing.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 667.9 of the Penal Code is amended to read:

667.9. (a) Any person who commits one or more of the crimes listed in subdivision (c) against a person who is 65 years of age or older, or against a person who is blind, a paraplegic, or a quadriplegic, or against a person who is under the age of 14 years, and that disability or condition is known or reasonably should be known to the person committing the crime, shall receive a one-year enhancement for each violation in addition to the sentence provided under Section 667.

(b) Any person who has a prior conviction for any of the offenses listed in subdivision (c), and who commits one or more of the crimes listed in that subdivision against a person who is 65 years of age or older, or against a person who is blind, deaf, developmentally disabled, a paraplegic, or a quadriplegic, or against a person who is under the age of 14 years, and that disability or condition is known or reasonably should be known to the person committing the crime, shall receive a two-year enhancement for each violation in addition to the sentence provided under Section 667.

(c) Subdivisions (a) and (b) apply to the following crimes:

(1) Robbery, in violation of Section 211.

(2) Kidnapping, in violation of Section 207.

(3) Kidnapping, in violation of Section 209.

(4) Rape by force, violence, or fear of immediate and unlawful

bodily injury on the victim or another person in violation of paragraph (2) of subdivision (a) of Section 261.

(5) Sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person in violation of Section 286 or 288a.

(6) Mayhem, as defined in Section 203.

(7) Carjacking, in violation of Section 215.

(8) Kidnapping, in violation of Section 209.5.

(9) Burglary of the first degree, as defined in Section 460.

(d) The existence of any fact which would bring a person under subdivision (a) or (b) shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(e) As used in this section, "developmentally disabled" means a severe, chronic disability of a person, which is all of the following:

(1) Attributable to a mental or physical impairment or a combination of mental and physical impairments.

(2) Likely to continue indefinitely.

(3) Results in substantial functional limitation in three or more of the following areas of life activity:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

SEC. 2. Section 999e of the Penal Code is amended to read:

999e. (a) An individual shall be the subject of career criminal prosecution efforts who is under arrest for the commission or attempted commission of one or more of the following felonies: robbery, carjacking, burglary, arson, any unlawful act relating to controlled substances in violation of Section 11351, 11351.5, or 11352 of the Health and Safety Code, receiving stolen property, grand theft and grand theft auto, and lewd or lascivious conduct upon a child; and who is either being prosecuted for three or more separate offenses not arising out of the same transaction involving one or more of these felonies, or has suffered at least one conviction during the preceding 10 years for any felony listed in paragraph (1) of this subdivision, or at least two convictions during the preceding 10 years for any felony listed in paragraph (2) of this subdivision:

(1) Robbery of the first degree, carjacking, burglary of the first degree, arson as defined in Section 451, unlawfully causing a fire as defined in Section 452, forcible rape, sodomy or oral copulation committed with force, lewd or lascivious conduct committed upon a child, kidnapping as defined in Section 209 or 209.5, or murder.

(2) Grand theft, grand theft auto, receiving stolen property,

robbery of the second degree, burglary of the second degree, kidnapping as defined in Section 207, assault with a deadly weapon or instrument, or any unlawful act relating to controlled substances in violation of Section 11351 or 11352 of the Health and Safety Code.

For purposes of this chapter, the 10-year periods specified in this section shall be exclusive of any time which the arrested person has served in state prison.

(b) In applying the career criminal selection criteria set forth above, a district attorney may elect to limit career criminal prosecution efforts to persons arrested for any one or more of the felonies listed in subdivision (a) of this section if crime statistics demonstrate that the incidence of one or more of these felonies presents a particularly serious problem in the county.

(c) In exercising the prosecutorial discretion granted by Section 999g, the district attorney shall consider the following: (1) the character, background, and prior criminal background of the defendant; and (2) the number and the seriousness of the offenses currently charged against the defendant.

SEC. 3. Section 1203.055 of the Penal Code is amended to read:

1203.055. (a) Notwithstanding any other law, in sentencing a person convicted of committing or of attempting to commit one or more of the offenses listed in subdivision (b) against a person who is a passenger, operator, driver, or other occupant of any public transit vehicle whether the offense or attempt is committed within the vehicle or directed at the vehicle, the court shall require that the person serve some period of confinement. If probation is granted, it shall be a condition of probation that the person shall be confined in the county jail for some period of time. If the time spent in jail prior to arraignment is less than 24 hours, it shall not be considered to satisfy the requirement that some period of confinement be imposed.

As used in this subdivision, "public transit vehicle" means any motor vehicle, streetcar, trackless trolley, bus, shuttle, light rail system, rapid transit system, subway, train, taxi cab, or jitney, which transports members of the public for hire.

(b) Subdivision (a) applies to the following crimes:

(1) Murder.

(2) A violation of Section 241, 241.3, 241.4, 244, 245, 245.2, or 246.

(3) Robbery, in violation of Section 211.

(4) Kidnapping, in violation of Section 207.

(5) Kidnapping, in violation of Section 209.

(6) Battery, in violation of Section 243, 243.1, or 243.3.

(7) Rape, in violation of Section 261, 262, 264, or 264.1.

(8) Assault with intent to commit rape or sodomy, in violation of Section 220.

(9) Any other offense in which the defendant inflicts great bodily injury on any person other than an accomplice. As used in this paragraph, "great bodily injury" means "great bodily injury" as defined in Section 12022.7.

(10) Grand theft, in violation of subdivision (1) of Section 487.

(11) Throwing of a hard substance or shooting a missile at a transit vehicle, in violation of Section 219.2.

(12) Unlawfully causing a fire, in violation of Section 452.

(13) Drawing, exhibiting, or using a firearm or deadly weapon, in violation of Section 417.

(14) A violation of Section 214.

(15) A violation of Section 215.

(16) Kidnapping, in violation of Section 209.5.

(c) Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person convicted of a felony offense falling within this section if the person has been previously convicted and sentenced pursuant to this section.

(d) (1) The existence of any fact which would make a person ineligible for probation under subdivisions (a) and (c) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.

A finding bringing the defendant within this section shall not be stricken pursuant to Section 1385 or any provision of law.

(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(e) The court shall require, as a condition of probation for any person convicted of committing a crime which took place on a public transit vehicle, except in any case in which the court makes a finding and states on the record clear and compelling reasons why the condition would be inappropriate, that the person make restitution to the victim. If restitution is found to be inappropriate, the court shall require as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, that the defendant perform specified community service. Nothing in this subdivision shall be construed to limit the authority of a court to provide additional conditions of probation.

(f) In any case in which a person is convicted of committing a crime which took place on a public transit vehicle, the probation officer shall immediately investigate and report to the court at a specified time whether, as a result of the crime, property damage or loss or personal injury was caused by the defendant, the amount of the damage, loss, or injury, and the feasibility of requiring restitution to be made by the defendant. When a probation report is required pursuant to Section 1203 the information required by this subdivision shall be added to that probation report.

SEC. 4. Section 1203.06 of the Penal Code is amended to read:

1203.06. Notwithstanding the provisions of Section 1203:

(a) Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons:

(1) Any person who personally used a firearm during the commission or attempted commission of any of the following crimes:

(A) Murder.

(B) Robbery, in violation of Section 211.

(C) Kidnapping, in violation of Section 207.

(D) Kidnapping, in violation of Section 209.

(E) Burglary of the first degree, as defined in Section 460.

(F) Except as provided in Section 1203.065, rape in violation of subdivision (2) of Section 261.

(G) Assault with intent to commit rape or sodomy, in violation of Section 220.

(H) Escape, in violation of Section 4530 or 4532.

(I) A felony violation of Section 136.1 or 137.

(J) Carjacking, in violation of Section 215.

(K) Kidnapping, in violation of Section 209.5.

(2) Any person previously convicted of a felony specified in subparagraphs (A) to (H), inclusive, or subparagraphs (J) and (K), of paragraph (1), or assault with intent to commit murder under former Section 217, who is convicted of a subsequent felony and who was personally armed with a firearm at any time during its commission or attempted commission or was unlawfully armed with a firearm at the time of his or her arrest for the subsequent felony.

(b) (1) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(3) As used in subdivision (a) "used a firearm" means to display a firearm in a menacing manner, to intentionally fire it, or to intentionally strike or hit a human being with it.

(4) As used in subdivision (a) "armed with a firearm" means to knowingly carry a firearm as a means of offense or defense.

SEC. 5. Section 1203.075 of the Penal Code is amended to read:

1203.075. Notwithstanding the provisions of Section 1203:

(a) Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within this section be stricken pursuant to Section 1385 for, any person who, with the intent to inflict the injury, personally inflicts great bodily injury on the person of another in the commission or attempted commission of any of the following crimes:

(1) Murder.

(2) Robbery, in violation of Section 211.

(3) Kidnapping, in violation of Section 207.
(4) Kidnapping, in violation of Section 209.
(5) Burglary of the first degree, as defined in Section 460.
(6) Rape, in violation of subdivision (2) of Section 261.
(7) Assault with intent to commit rape or sodomy, in violation of Section 220.
(8) Escape, in violation of Section 4530 or 4532.
(9) A violation of subdivision (a) of Section 289.
(10) Sodomy, in violation of Section 286.
(11) Oral copulation, in violation of Section 288a.
(12) Carjacking, in violation of Section 215.
(13) Kidnapping, in violation of Section 209.5.

(b) (1) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.

(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(3) As used in subdivision (a), "great bodily injury" means "great bodily injury" as defined in Section 12022.7.

SEC. 6. Section 1203.09 of the Penal Code is amended to read:

1203.09. (a) Notwithstanding any other law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who commits or attempts to commit one or more of the crimes listed in subdivision (b) against a person who is 60 years of age or older; or against a person who is blind, a paraplegic, a quadriplegic, or a person confined to a wheelchair and that disability is known or reasonably should be known to the person committing the crime; and who during the course of the offense inflicts great bodily injury upon the person.

(b) Subdivision (a) applies to the following crimes:
(1) Murder.
(2) Robbery, in violation of Section 211.
(3) Kidnapping, in violation of Section 207.
(4) Kidnapping, in violation of Section 209.
(5) Burglary of the first degree, as defined in Section 460.
(6) Rape by force or violence, in violation of subdivision (2) of Section 261.
(7) Assault with intent to commit rape or sodomy, in violation of Section 220.
(8) Carjacking, in violation of Section 215.
(9) Kidnapping, in violation of Section 209.5.

(c) The existence of any fact which would make a person ineligible for probation under either subdivision (a) or (f) shall be alleged in the information or indictment, and either admitted by the

defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(d) As used in this section "great bodily injury" means "great bodily injury" as defined in Section 12022.7.

(e) This section shall apply in all cases, including those cases where the infliction of great bodily injury is an element of the offense.

(f) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person convicted of having committed one or more of the following crimes against a person who is 60 years of age or older: assault with a deadly weapon or instrument, battery which results in physical injury which requires professional medical treatment, carjacking, robbery, or mayhem.

SEC. 7. Section 1601 of the Penal Code is amended to read:

1601. (a) In the case of any person charged with and found incompetent on a charge of, convicted of, or found not guilty by reason of insanity of murder, mayhem, aggravated mayhem, a violation of Section 207, 209, or 209.5 in which the victim suffers intentionally inflicted great bodily injury, robbery or carjacking with a deadly or dangerous weapon or in which the victim suffers great bodily injury, a violation of subdivision (a) or (b) of Section 451, a violation of paragraph (2) or (3) of subdivision (a) of Section 261, a violation of Section 459 in the first degree, a violation of Section 220 in which the victim suffers great bodily injury, a violation of Section 288, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310, or any felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, outpatient status under this title shall not be available until that person has actually been confined in a state hospital or other facility for 180 days or more after having been committed under the provisions of law specified in Section 1600.

(b) In the case of any person charged with, and found incompetent on a charge of, or convicted of, any misdemeanor or any felony other than those described in subdivision (a), or found not guilty of any misdemeanor by reason of insanity, outpatient status under this title may be granted by the court prior to actual confinement in a state hospital or other treatment facility under the provisions of law specified in Section 1600.

SEC. 8. Section 3420 of the Penal Code is amended to read:

3420. (a) Within five days after the receipt of an inmate by the Department of Corrections who has already applied for admission to a program, or of her application for admission to a program, whichever is later, the department shall give notice of her application to the child's current caretaker or guardian, if any, and if it has not already been notified pursuant to Section 3415, the

appropriate local social services agency that conducts investigations for child neglect and dependency hearings.

(b) The department and the individuals and agencies notified shall have five days from the date of notice to decide whether or not to challenge the appropriateness of the applicant's entry into the program. Lack of a petition filed by that time shall result in a presumption that the individuals and agencies notified do not challenge the appropriateness of the applicant's entry into the program.

(c) The local agency which has been notified pursuant to Section 3415 shall not initiate the process of considering whether or not to file until after the sentencing court has sentenced the applicant.

(d) The appropriate local agency that conducts investigations for child neglect and dependency hearings, the Department of Corrections, and the current guardian or caretaker of the child, shall have the authority to file for a fitness proceeding against the mother after the mother has applied in writing to participate in the program.

(e) The determination of whether or not to file shall be based in part on the likelihood of the mother being a fit parent for the child in question both during the program and afterwards. Program content shall be taken into account in this determination. There shall be a presumption affecting the burden of producing evidence in favor of filing for a fitness proceeding under the following circumstances:

(1) The applicant was convicted of one or more of the following violent felonies:

(A) Murder.

(B) Mayhem.

(C) Aggravated mayhem.

(D) Kidnapping as defined in Section 207 or 209.

(E) Lewd acts on a child under 14 as defined in Section 288.

(F) Any felony in which the defendant inflicts great bodily injury on a person other than accomplices which has been alleged and proven.

(G) Forcible rape in violation of subdivision (2), (3), or (4) of Section 261.

(H) Sodomy by force, violence, duress, menace, or threat of great bodily injury.

(I) Oral copulation by force, violence, duress, menace, or threat of great bodily injury.

(2) The applicant was convicted of child abuse in the current or any proceeding.

(f) Fitness petitions shall be resolved in the court of first instance as soon as possible for purposes of this section. Given the need to place the child as soon as possible, the first determination by the court as to the applicant's fitness as a mother shall determine her eligibility for the program for the current application. Outcomes of appeals shall not affect eligibility.

SEC. 9. Section 13853 of the Penal Code is amended to read:

13853. An individual may be the subject of career criminal apprehension efforts who is under investigation for the commission or attempted commission of one or more of the following felonies: homicide, rape or sexual assault, child molestation, robbery, carjacking, burglary, arson, any unlawful act relating to controlled substances in violation of Section 11351 or 11352 of the Health and Safety Code, receiving stolen property, grand theft and grand theft auto; and who is determined to have committed three or more separate felony offenses not arising out of the same transaction, or has suffered at least one conviction during the preceding 10 years for the commission or attempted commission of any felony listed in subdivision (a), or at least two convictions during the preceding 10 years for the commission or attempted commission of any felony listed in subdivision (b):

(a) Robbery of the first degree, carjacking, burglary of the first degree, arson as defined in Section 451 or 452, forcible rape, sodomy or oral copulation committed with force, lewd or lascivious conduct committed upon a child, kidnapping as defined in Section 209 or 209.5, or murder.

(b) Grand theft, grand theft auto, receiving stolen property, robbery of the second degree, burglary of the second degree, kidnapping as defined in Section 207, assault with a deadly weapon or instrument, or any unlawful act relating to controlled substances in violation of Section 11351 or 11352 of the Health and Safety Code.

For purposes of this chapter, the 10-year periods specified in this section shall be exclusive of any time which the arrested person has served in state prison.

SEC. 10. Section 6500 of the Welfare and Institutions Code is amended to read:

6500. On and after July 1, 1971, no mentally retarded person may be committed to the State Department of Developmental Services pursuant to this article, unless he or she is a danger to himself or herself or others. For the purposes of this article, dangerousness to self or others shall be considered to include, but not be limited to, a finding of incompetence to stand trial pursuant to the provisions of Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code when the defendant has been charged with murder, mayhem, aggravated mayhem, a violation of Section 207, 209, or 209.5 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, robbery perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, carjacking perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, a violation of subdivision (b) of Section 451 of the Penal Code, a violation of paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section

12303.1, 12303.3, 12308, 12309, or 12310 of the Penal Code, or if the defendant has been charged with a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person.

Any order of commitment made pursuant to this article shall expire automatically one year after the order of commitment is made. This section shall not be construed to prohibit any party enumerated in Section 6502 from filing subsequent petitions for additional periods of commitment. In the event such subsequent petitions are filed, the procedures followed shall be the same as with an initial petition for commitment.

In any proceedings conducted under the authority of this article the alleged mentally retarded person shall be informed of his or her right to counsel by the court; and if the person does not have an attorney for the proceedings the court shall immediately appoint the public defender or other attorney to represent him or her. The person shall pay the cost for such legal service if he or she is able to do so. At any judicial proceeding under the provisions of this article, allegations that a person is mentally retarded and a danger to himself or herself or to others shall be presented by the district attorney for the county unless the board of supervisors, by ordinance or resolution, delegates this authority to the county counsel.

SEC. 11. Section 8103 of the Welfare and Institutions Code is amended to read:

8103. (a) (1) No person who after October 1, 1955, has been adjudicated by a court of any state to be a danger to others as a result of mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control any firearm or any other deadly weapon unless there has been issued to the person a certificate by the court of adjudication upon release from treatment or at a later date stating that the person may possess a firearm or any other deadly weapon without endangering others, and the person has not, subsequent to the issuance of the certificate, again been adjudicated by a court to be a danger to others as a result of a mental disorder or mental illness.

(2) The court shall immediately notify the Department of Justice of the court order finding the individual to be a person described in paragraph (1). The court shall also notify the Department of Justice of any certificate issued as described in paragraph (1).

(b) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of murder, mayhem, a violation of Section 207, 209, or 209.5 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, carjacking or robbery in which the victim suffers great bodily injury, a violation of Section 451 or 452 of the Penal Code involving a trailer coach, as defined in Section 635 of the Vehicle Code, or any dwelling house, a violation of paragraph (2) or (3) of subdivision (a) of Section 261

of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code, or of a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, or a violation of the law of any other state or the United States that includes all the elements of any of the above felonies as defined under California law, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession or under his or her custody or control any firearm or any other deadly weapon.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1).

(c) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of any crime other than those described in subdivision (b) shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon unless the court of commitment has found the person to have recovered sanity, pursuant to Section 1026.2 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her sanity.

(d) (1) No person found by a court to be mentally incompetent to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code or the law of any other state or the United States, shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon, unless there has been a finding with respect to the person of restoration to competence to stand trial by the committing court, pursuant to Section 1372 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be mentally incompetent as described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her competence.

(e) (1) No person who has been placed under conservatorship by a court, pursuant to Section 5350 or the law of any other state or the United States, because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon while under the conservatorship if, at the time the

conservatorship was ordered or thereafter, the court which imposed the conservatorship found that possession of a firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others. Upon placing any person under conservatorship, and prohibiting firearm or any other deadly weapon possession by the person, the court shall notify the person of this prohibition.

(2) The court shall immediately notify the Department of Justice of the court order placing the person under conservatorship and prohibiting firearm or any other deadly weapon possession by the person as described in paragraph (1). The notice shall include the date the conservatorship was imposed and the date the conservatorship is to be terminated. If the conservatorship is subsequently terminated before the date listed in the notice to the Department of Justice or the court subsequently finds that possession of a firearm or any other deadly weapon by the person would no longer present a danger to the safety of the person or others, the court shall immediately notify the Department of Justice.

(3) All information provided to the Department of Justice pursuant to paragraph (2) shall be kept confidential, separate, and apart from all other records maintained by the department, and shall be used only to determine eligibility to purchase or possess firearms or other deadly weapons. Any person who knowingly furnishes that information for any other purpose is guilty of a misdemeanor. All the information concerning any person shall be destroyed upon receipt by the Department of Justice of notice of the termination of conservatorship as to that person pursuant to paragraph (2).

(f) (1) No person who has been (A) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (B) assessed within the meaning of Section 5151, and (C) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility. A person described in the preceding sentence, however, may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm if the superior court has, pursuant to paragraph (4), upon petition of the person, found, by a preponderance of the evidence, that the person is likely to use firearms in a safe and lawful manner.

(2) For each person subject to this subdivision, the facility shall immediately, on the date of admission, submit a report to the Department of Justice, on a form prescribed by the department, containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility.

Any report prescribed by this subdivision shall be confidential, except for purposes of the court proceedings described in this

subdivision and for determining the eligibility of the person to own, possess, control, receive, or purchase a firearm.

(3) Prior to, or concurrent with, the discharge, the facility shall inform a person subject to this subdivision that he or she is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years. Simultaneously, the facility shall inform the person that he or she may petition a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm.

(4) Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The People of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the petition to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 14 days after the district attorney was notified of the hearing date by the clerk of the court. The district attorney may notify the county mental health director of the petition who shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this section. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state summary criminal history information.

(5) Nothing in this subdivision shall prohibit the use of reports filed pursuant to this section to determine the eligibility of persons to own, possess, control, receive, or purchase a firearm if the person is the subject of a criminal investigation, a part of which involves the ownership, possession, control, receipt, or purchase of a firearm.

(g) (1) No person who has been certified for intensive treatment under Section 5250, 5260, or 5270.15 shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years.

Any person who meets the criteria contained in subdivision (e) or (f) who is released from intensive treatment shall nevertheless, if applicable, remain subject to the prohibition contained in subdivision (e) or (f).

(2) For each person certified for intensive treatment under paragraph (1), the facility shall immediately submit a report to the Department of Justice, on a form prescribed by the department, containing information regarding the person, including, but not limited to, the legal identity of the person and the legal grounds upon which the person was certified. Any report submitted pursuant to this paragraph shall only be used for the purposes specified in paragraph (2) of subdivision (f).

(3) Prior to, or concurrent with, the discharge of each person certified for intensive treatment under paragraph (1), the facility shall inform the person of that information specified in paragraph (3) of subdivision (f).

(4) Any person who is subject to the prohibition contained in paragraph (1) may fully invoke paragraph (4) of subdivision (f).

(h) For all persons identified in subdivisions (f) and (g), facilities shall report to the Department of Justice as specified in those subdivisions, except facilities shall not report persons under subdivision (g) if the same persons previously have been reported under subdivision (f).

Additionally, all facilities shall report to the Department of Justice upon the discharge of persons from whom reports have been submitted pursuant to subdivision (f) or (g). However, a report shall not be filed for persons who are discharged within 31 days after the date of admission.

(i) Every person who owns or possesses or has under his or her custody or control, or purchases or receives, or attempts to purchase or receive, any firearm or any other deadly weapon in violation of this section is guilty of a felony which is punishable by imprisonment in the state prison, or in the county jail for not more than one year, and which is subject to subdivision (b) of Section 17 of the Penal Code.

(j) "Deadly weapon," as used in this section, has the meaning prescribed by Section 8100.

CHAPTER 225

An act to amend Section 1785.3 of the Civil Code, relating to consumer credit.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 1785.3 of the Civil Code is amended to read:

1785.3. The following terms as used in this title have the meaning expressed in this section:

(a) "Adverse action" means a denial or revocation of credit, a change in the terms of an existing credit arrangement which is adverse to the interests of the consumer, or a refusal to grant credit in substantially the amount or on substantially the terms requested. "Adverse action" includes all of the following:

(1) Any denial of, increase in any charge for, or reduction in the amount of, insurance for personal, family, or household purposes made in connection with the underwriting of insurance.

(2) Any denial of employment or any other decision made for employment purposes which adversely affects any current or prospective employee.

(3) Any action taken, or determination made, with respect to a consumer (A) for an application for an extension of credit, or an application for the hiring of a dwelling unit, and (B) that is adverse to the interests of the consumer.

"Adverse action" does not include (A) a refusal to extend additional credit to a consumer under an existing credit arrangement if (i) the applicant is delinquent or otherwise in default under that credit arrangement or (ii) the additional credit would exceed a credit limit previously established for the consumer or (B) a refusal or failure to authorize an account transaction at a point of sale.

(b) "Consumer" means a natural individual.

(c) "Consumer credit report" means any written, oral, or other communication of any information by a consumer credit reporting agency bearing on a consumer's credit worthiness, credit standing, or credit capacity, which is used or is expected to be used, or collected in whole or in part, for the purpose of serving as a factor in establishing the consumer's eligibility for: (1) credit to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) hiring of a dwelling unit, as defined in subdivision (c) of Section 1940, or (4) other purposes authorized in Section 1785.11.

The term does not include (1) any report containing information solely as to transactions or experiences between the consumer and the person making the report, (2) any communication of that information or information from a credit application by a consumer

that is internal within the organization that is the person making the report or that is made to an entity owned by, or affiliated by corporate control with, that person; provided that the consumer is informed by means of a clear and conspicuous written disclosure that information contained in the credit application may be provided to these persons; however, where a credit application is taken by telephone, disclosure shall initially be given orally at the time the application is taken, and a clear and conspicuous written disclosure shall be made to the consumer in the first written communication to that consumer after the application is taken, (3) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device, (4) any report by a person conveying a decision whether to make a specific extension of credit directly or indirectly to a consumer in response to a request by a third party, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures to the consumer required under Section 1785.20, (5) any report containing information solely on a consumer's character, general reputation, personal characteristics, or mode of living which is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on, or others with whom he is acquainted or who may have knowledge concerning those items of information, (6) any communication about a consumer in connection with a credit transaction which is not initiated by the consumer, between persons who are affiliated (as defined in Section 150 of the Corporations Code) by common ownership or common corporate control (as defined by Section 160 of the Corporations Code), if either of those persons has complied with paragraph (2) of subdivision (b) of Section 1785.20.1 with respect to a prequalifying report from which the information communicated is taken and provided the consumer has consented to the provision and use of the prequalifying report in writing, or (7) any consumer credit report furnished for use in connection with a transaction which consists of an extension of credit to be used solely for a commercial purpose.

(d) "Consumer credit reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the business of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer credit reports to third parties, but does not include any governmental agency whose records are maintained primarily for traffic safety, law enforcement, or licensing purposes.

(e) "Credit transaction that is not initiated by the consumer" does not include the use of a consumer credit report by an assignee for collection or by a person with which the consumer has an account for purposes of (1) reviewing the account or (2) collecting the account. For purposes of this subdivision, "reviewing the account" includes activities related to account maintenance and monitoring,

credit line increases, and account upgrades and enhancements.

(f) "Employment purposes," when used in connection with a consumer credit report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

(g) "File," when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer credit reporting agency, regardless of how the information is stored.

(h) "Firm offer of credit" means any offer of credit to a consumer that will be honored if, based on information in a consumer credit report on the consumer and other information bearing on the creditworthiness of the consumer, the consumer is determined to meet the criteria used to select the consumer for the offer and the consumer is able to provide any real property collateral specified in the offer. For purposes of this subdivision, the phrase "other information bearing on the creditworthiness of the consumer" means information that the person making the offer is permitted to consider pursuant to any rule, regulation, or formal written policy statement relating to the federal Fair Credit Reporting Act, as amended (15 U.S.C. Sec. 1681 et seq.), promulgated by the Federal Trade Commission or any federal bank regulatory agency.

(i) "Item of information" means any of one or more informative entries in a credit report which causes a creditor to deny credit to an applicant or increase the cost of credit to an applicant or deny an applicant a checking account with a bank or other financial institution.

(j) "Person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(k) "Prequalifying report" means a report containing the limited information permitted under paragraph (2) of subdivision (b) of Section 1785.11.

(*l*) "State or local child support enforcement agency" means the district attorney acting pursuant to Section 11475.1 of the Welfare and Institutions Code to establish or enforce child support obligations, and any state or local agency or official that succeeds to these responsibilities under a successor statute.

CHAPTER 226

An act to amend Section 14529 of the Government Code, relating to transportation.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 14529 of the Government Code is amended to read:

14529. (a) The commission shall adopt and submit to the Legislature and the Governor not later than August 1, 1990, and April 1 of each even-numbered year thereafter, a state transportation improvement program. The program shall cover a period of seven years, beginning with July 1 of the year it is adopted, and shall be a statement of intent by the commission for the allocation of funds during those seven years.

(b) The state transportation improvement program shall include all major projects, as determined by the commission, to be funded from state transportation funds, including revenues from transportation bond acts allocated by the commission during those seven years, and shall be limited to intercity, commuter and urban rail capital improvements, flexible congestion relief, interregional road systems, and retrofit soundwalls.

(c) The state transportation improvement program shall include a list of projects which are expected to be advertised prior to July 1 of the year of adoption, but for which the commission has not yet allocated funds.

(d) Prior to the adoption of the state transportation improvement program, the commission shall hold at least one hearing in northern California and one hearing in southern California to reconcile any objections by any county or regional agency to the department's program or the department's objections to any regional program.

(e) The projects included in the adopted state transportation improvement program shall be limited to those projects that are included in the immediately prior state transportation improvement program and projects submitted or recommended pursuant to Sections 14526 and 14527.

(f) In no event shall the state transportation improvement program exceed the funds reasonably expected to be available as set forth in the estimate adopted pursuant to Section 14525.

(1) The state transportation improvement program is a schedule for project delivery and shall specify the year of delivery. Each project to be included in the program shall include the escalated current cost of the project updated to at least November 1 of the preceding year. While it is recognized that the initial escalated current cost cannot be based on a full study of all aspects of the

project, nevertheless, any project previously included in a program, where the state and federal share of the latest escalated current cost exceeds 120 percent of the state and federal share of the project's base cost, shall not be included in the next adopted program unless the commission determines that the project is the most cost-effective of all the projects in the county that are not included in the program. The project's base cost shall be the cost at which the project was originally placed in the program or the cost established by the commission upon its determination that this project is the most cost-effective for projects that have been reviewed under this section, whichever is higher.

(2) If, as a result of cost increases, funding restrictions require the delay of projects, the commission shall give consideration to delaying projects with the greatest cost increases.

(g) The state transportation improvement program shall identify and include the cost of project development, including, but not limited to, design and estimating costs and the costs of environmental studies.

CHAPTER 227

An act to amend Sections 24001, 24002, 24003, 24006, 24007, 24008, 24009, 24010, 24011, 24012, 24013, 24015, and 24018 of, and to add Section 24013.5 to, the Food and Agricultural Code, relating to horses, and making an appropriation therefor.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 24001 of the Food and Agricultural Code is amended to read:

24001. For the purposes of this chapter:

(a) "Event" means any public horse show, competition (including cutting horse competitions, endurance riding competitions, competitive trail competitions, gymkhanas, and any other competition as determined by the secretary by regulation), or sale, in which money, goods, or services are exchanged for the right to compete for a single set of placings leading to points or awards at the show or competition, or to permit a horse to be consigned for sale. "Event" does not include any of the following:

(1) Those competitions subject to the jurisdiction of the California Horse Racing Board.

(2) Sales consisting solely of racing stock.

(3) A rodeo related competition including both rough stock and timed performance competitions when held apart from a horse show.

(4) Roping club events when held apart from a horse show.
(5) Cattle team pennings when held apart from a horse show.
(6) Barrel racing when held apart from a horse show.
(7) Parade horse competitions.
(8) Public horse shows and public horse competitions that do not last longer than one day and whose total cumulative fees to enter into any one or all classes do not exceed four dollars and ninety-nine cents ($4.99), unless otherwise prescribed by the secretary by regulation. "Grounds fees," "stall fees," or any other fee composed of money, goods, or services, which is assessed to permit competitors or consignors to enter into an event are considered a part of this total cumulative fee.

(b) "Event manager" means the person in charge of an event, including the person responsible for registering the event with the department, and the person responsible for the assessment, collection, and remittance of fees. "Event manager" includes horse show secretaries and managers, competitive event managers, and horse sale managers and sale owners.

(c) "Horse" means and includes all horses, mules, and asses.

(d) "Licensed veterinarian" means any person licensed as a veterinarian by the State of California.

(e) "Prohibited substance" is any stimulant, depressant, tranquilizer, anesthetic, including any local anesthetic, sedative analgesic, corticosteroid anabolic steroid, nonsteroidal anti-inflammatory drug, or agent that would sore a horse, which could affect the performance, soundness, or disposition of a horse, or any drug regardless of how harmless or innocuous it might otherwise be that could interfere with the detection of any prohibited substance. It also includes any metabolite or derivative of any prohibited substance.

(f) "Exempt medications" are those medications containing prohibited substances determined by the secretary to be exempt from this chapter. With respect to public horse shows or competitions, in addition to any other "exempt medication," the administration of a single nonsteroidal anti-inflammatory substance in accordance with the recommendations on the manufacturer's label shall also constitute the administration of an "exempt medication." However, the administration of two or more nonsteroidal anti-inflammatory substances within 72 hours prior to the show or competition constitutes the administration of a prohibited substance.

(g) "Public" horse shows, competitions, or sales are those events that permit a person to enter or consign a horse for sale in exchange for money, goods, or services. Any club or group that permits people to join, enter into competition, or consign a horse for sale in exchange for money, goods, or services, is "public" for the purposes of this chapter.

(h) "Stimulant or depressant" means any medication that stimulates or depresses the circulatory, respiratory, or central or

peripheral nervous system.

(i) To "sore" means to apply an irritating or blistering agent internally or externally for the purpose of affecting the performance, soundness, or disposition of a horse.

(j) "Trainer" means any person who has the responsibility for the care, training, custody, or performance of a horse, including, but not limited to, any person who signs any entry blank of any public horse show, competition, or sale, whether that person is an owner, rider, agent, coach, adult, or minor.

SEC. 2. Section 24002 of the Food and Agricultural Code is amended to read:

24002. (a) Except as otherwise provided in subdivision (b), the secretary has jurisdiction of all events under this chapter and shall administer and enforce this chapter.

(b) This chapter does not apply to any individual horse show, competition, or sale that is certified by the secretary. The secretary may, with the concurrence of the advisory committee established pursuant to Section 24013.5 and after holding a public hearing, certify any horse show, competition, or sale, if the secretary determines all of the following are satisfied:

(1) The sponsoring organization or association requests certification in writing.

(2) The event manager of the individual event requests certification of that event in writing at least 30 days prior to the event.

(3) The drug usage at the event is subject to the supervision of a qualified licensed veterinarian.

(4) Adequate security and identification of test samples are maintained, and analysis of specimens is done by a laboratory that is approved by the secretary.

(5) Actions to be taken and the penalties imposed for violating the rules or regulations of the organization or association as to drug usage are as severe or more severe as those imposed by this chapter for any similar violation.

(6) An effective enforcement procedure is followed to control drug usage at the event.

The certification shall be effective and operate on a one-time basis as to any individual horse show, competition, or sale. The secretary shall withdraw the certification for any horse show, competition, or sale, if the secretary finds that the drug prevention program of the organization or association that requested certification is not satisfactorily accomplishing the intent and objectives of this chapter. The secretary may deny certification to any horse show, competition, or sale to be given by the same organization or association as a horse show, competition, or sale from which certification is withdrawn pursuant to this paragraph.

SEC. 3. Section 24003 of the Food and Agricultural Code is amended to read:

24003. Except as otherwise prohibited by law, the full use of

modern therapeutic measures for the improvement and protection of the health of the horses is permitted.

SEC. 4. Section 24006 of the Food and Agricultural Code is amended to read:

24006. Any trainer or owner, or both the trainer and owner, event manager, or any person who administers, attempts to administer, instructs, authorizes, aids, conspires with another to administer, or employs anyone who administers or attempts to administer a prohibited substance to a horse in violation of this chapter shall be subject to the penalties provided in this chapter that are applicable to the trainer or owner. The trainer or owner is responsible for complying with this chapter after any course of medical therapy has been administered or prescribed by a licensed veterinarian employed by the trainer or owner to examine and treat a horse. A licensed veterinarian who is employed by a trainer or owner to examine and treat a horse is not subject to the penalties provided in this chapter solely on account of that examination and treatment or prescription.

SEC. 5. Section 24007 of the Food and Agricultural Code is amended to read:

24007. (a) In addition to any other penalty or fine prescribed by law, a trainer or owner, or both the trainer and owner, of a horse found to have received a prohibited substance in violation of this chapter shall be subject to a civil penalty of not less than one hundred dollars ($100) or more than ten thousand dollars ($10,000) for each violation, to be recovered by the secretary in any court of competent jurisdiction.

(b) In addition to the penalty specified in subdivision (a) or any other penalty or fine prescribed by law, the secretary may suspend any trainer or owner, or both the trainer and owner, from all competitions at any public horse show or competition for a period of not less than 90 days or more than one year for each violation. It is unlawful for any person suspended from competition by the secretary to compete in any public horse show or competition during the period of suspension. Any person suspended from competition by the secretary who competes in any public horse show or competition during the period of suspension is subject to the civil penalty prescribed by subdivision (a) for each entry during the period of suspension.

(c) The owner or owners of a horse found to have received a prohibited substance in violation of this chapter shall forfeit all prize money or sweepstakes and any trophies, ribbons, and points won at any public horse show or competition by the horse and the same shall be redistributed by the horse show or competition in accordance with its rules or bylaws. The owner shall pay a fee of fifty dollars ($50) to the public horse show or competition. The horse may be suspended for any period of time specified by the secretary. If the violation occurs at a horse sale, the contract of sale is voidable at the buyer's discretion.

(d) In lieu of civil prosecution by the secretary, the secretary may levy a civil penalty against a person violating any provision of this chapter.

(e) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard, including the right to review the secretary's evidence and a right to present evidence on his or her own behalf.

(f) Review of the decision of the secretary may be sought by the person against whom the penalty was levied within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(g) After the exhaustion of the review procedure provided in this section, the secretary or his or her representative, may file a certified copy of a final decision of the secretary that directs the payment of a civil penalty and, if applicable, any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

SEC. 6. Section 24008 of the Food and Agricultural Code is amended to read:

24008. The horses at a public horse show, competition, or horse sale are subject to examination under the direction of a licensed veterinarian of the department or agent thereof. The appointed licensed veterinarian, with the approval of the secretary, may appoint technicians and agents to perform certain duties under this chapter that are not prohibited by other provisions of law. The examination may include physical, saliva, urine, blood tests, or any other tests or procedure in the discretion of the licensed veterinarian necessary to effectuate the purposes of this chapter. Any or all horses in or from a class or all classes in a public horse show or competition or any horse entered into or from any class or competition or sale, whether in competition or not, if the horse is on the show or sale grounds, or any horse withdrawn by any person or trainer within 24 hours prior to a class for which it has been entered as well as any horse withdrawn from any horse sale, may be examined.

SEC. 7. Section 24009 of the Food and Agricultural Code is amended to read:

24009. Whether a horse is in competition or not, refusal to submit a horse in a public horse show, competition, or sale for examination or to cooperate with the licensed veterinarian or his or her technicians and agents shall constitute a violation of, and subject the responsible person to, penalties under this chapter. A suitable sample shall be collected from a horse selected for testing by a drug testing agent of the department unless the agent releases the horse from testing.

SEC. 8. Section 24010 of the Food and Agricultural Code is amended to read:

24010. If the chemical analysis of blood, urine, saliva, or other samples taken from a horse indicate the presence of a prohibited substance or any metabolite or derivative thereof, it shall be prima facie evidence that the prohibited substance has been administered to the horse. A hearing shall be held when a positive report is received from a chemist identifying a prohibited substance or any metabolite or derivative thereof, unless the requirements of Section 24011 have been met or the prohibited substance consists solely of an exempt medication. The trainer or owner, or both the trainer and owner, responsible for the condition of the horse shall not be subject to the penalty prescribed under this chapter or suspended, and no horse shall be barred from competition until after the conclusion of the hearing and a written ruling thereon has been made by the secretary.

SEC. 9. Section 24011 of the Food and Agricultural Code is amended to read:

24011. A horse exhibited at an event that receives a prohibited substance, excluding exempt medications, within 48 hours prior to any withdrawal time established by or pursuant to this chapter, shall not be eligible for show, competition, or sale, unless the following requirements have been met and the facts requested are submitted to the secretary in writing:

(a) Medication shall be therapeutic and necessary for treatment of an illness or injury.

(b) The horse shall be withdrawn from show, competition, or the sale for a period of not less than 24 hours after a prohibited substance is administered, unless the secretary determines a different withdrawal period for a specific prohibited substance or class of substances. The withdrawal period for anabolic steroids is 90 days after administration.

(c) The medication shall be administered by a licensed veterinarian, the trainer, or owner.

(d) Medication shall be identified as to the amount, strength, and mode of administration.

(e) The statement shall include the date and time of administration of the medication.

(f) The horse shall be identified by its name, age, sex, color, and entry number.

(g) The statement shall contain diagnosis and reason for administering the medication.

(h) The statement shall be signed by the person administering the medication.

(i) The statement shall be filed with the event manager of the public horse show or competition or general manager of the horse sale within one hour after administration or one hour after the event manager of the event returns to duty, if administration is at a time other than during show or sale hours.

(j) The statement shall be signed by the event manager or his or her designated representative and time of receipt recorded on the statement by the event manager or his or her designated representative.

If the chemical analysis of the sample taken from a horse so treated indicates the presence of a prohibited substance and all the requirements of this section have been fully complied with, the information contained in the medication report and any other relevant evidence shall be considered at any hearing provided under this chapter in determining whether any provision of this chapter has been violated.

SEC. 10. Section 24012 of the Food and Agricultural Code is amended to read:

24012. (a) To provide funds for enforcement of this chapter, the event manager of every event shall charge and collect a fee of not more than three dollars ($3) through the 1997-98 fiscal year for each horse entered or exhibited in the event, and each horse consigned for public sale, as determined by the secretary to be necessary to carry out this chapter. Event managers shall be notified of the applicable fee at the time of registration of an event. The event manager of the registered event shall remit the fee established pursuant to this section, in addition to the completed assessment summary, as prescribed by the secretary, to the department within 15 days after completion of the event.

Commencing with the 1998–99 fiscal year, the secretary, based on the recommendation of the advisory committee appointed under Section 24013.5, shall set the fee at a rate higher or lower than the fee established through the 1997–98 fiscal year, but the fee shall not exceed five dollars ($5).

(b) Any event manager who does not pay to the department the full amount that is due pursuant to this section shall pay a civil penalty of 10 percent of the amount due plus interest at the rate of 1½ percent per month of the unpaid balance computed from the date of the event. The event manager is personally liable for fees and penalties owed the department pursuant to this section.

(c) Fees and penalties collected pursuant to this section shall be deposited in the Department of Food and Agriculture Fund. All funds received by the department from fees and penalties pursuant to this section shall be used exclusively to carry out the intent and purpose of this chapter, including, but not limited to, pharmacological studies, drug testing, and drug research, inspection for drugs, prosecution of alleged offenders, administrative costs, attorneys and expert witness fees, and any other costs necessary to carry out this chapter.

SEC. 11. Section 24013 of the Food and Agricultural Code is amended to read:

24013. (a) The secretary shall adopt such reasonable rules and regulations as are necessary to carry out this chapter.

(b) The secretary shall adopt an exempt medications list, and shall

annually revise the list on October 1 of each subsequent year. All changes to the list shall take effect on January 1 of the following year. At the time an event is registered pursuant to Section 24015, a copy of the exempt medications list shall be provided to the event manager for reference purposes. The exempt medications list shall also be made available to any person upon request.

(c) In making and adopting regulations, the secretary shall first consult with the advisory committee appointed pursuant to Section 24013.5.

SEC. 12. Section 24013.5 is added to the Food and Agricultural Code, to read:

24013.5. The secretary shall appoint an advisory committee to serve without compensation. The committee shall meet at least twice a year and shall elect a chairperson at its first meeting after appointment. Thereafter selection of the chairperson shall take place as deemed appropriate by the committee. Members of the committee and their alternates may include, but not be limited to, representation from the California State Horsemen's Association, the Equestrian Trails, Inc., the California Professional Horsemen's Association, the Los Angeles County Horse Show Exhibitors Association, the California Dressage Society, the Pacific Coast Quarter Horse Association, the Central California Quarter Horse Association, the Division of Fairs and Expositions, the North American Trail Ride Conference, the American Horse Shows Association, the University of California School of Veterinary Medicine, the Appaloosa Club, the International Arabian Horse Association, the Pinto Horse Association of America, the California Veterinary Medical Association, the NorCal Hunter Jumper Association, the California Farm Bureau Federation, the California Gymkhana Association, the American Morgan Horse Association, the Pacific Coast Cutting Horse Association, the Pacific Coast Horse Shows Association, and any other organization the secretary deems appropriate. These advisory committee members and their alternates shall be representative of the industry that this chapter regulates. The members of the committee may also include, but are not limited to, representatives of breed associations represented within the state and other organizations with an interest in the deterrence of drug abuse in the industry that this chapter regulates. In addition, the secretary may appoint one public member to the committee.

Upon the secretary's request, the committee shall submit to the secretary the names of three or more natural persons, each of whom shall be a citizen and resident of this state for appointment by the secretary as a public member and an alternate public member of the committee. The secretary may appoint one of the nominees as the public member on the committee. If all nominees are unsatisfactory to the secretary, the committee shall continue to submit lists of nominees until the secretary has made a selection. Any vacancy in the office of the public member of the committee shall be filled by

appointment by the secretary from the nominee or nominees similarly qualified and submitted by the committee. The public member of the committee shall represent the interests of the general public in all matters considered by the committee and shall have the same voting and other rights and immunities as other members of the committee.

SEC. 13. Section 24015 of the Food and Agricultural Code is amended to read:

24015. (a) Every event shall be registered with the department, unless otherwise prescribed by the secretary by regulation. The event manager of an event shall file a completed registration form with the department, as prescribed by the secretary, at least 30 days prior to the beginning of the event, which shall constitute the registration of the event.

(b) An event manager who fails to register an event required to be registered pursuant to this chapter is subject to a civil penalty to be levied by the secretary in an amount not less than one hundred dollars ($100) or more than two thousand five hundred dollars ($2,500). In determining the amount of the penalty, the secretary shall consider any previous violations, and whether the event manager cooperated in good faith with the department.

SEC. 14. Section 24018 of the Food and Agricultural Code is amended to read:

24018. The secretary may accept on behalf of the state, donations of money from any person, association, or agency interested in the control of drugging of horses. Any fines, penalties, fees, or donations collected by the secretary under this chapter shall be deposited in the Department of Food and Agriculture Fund. Any interest earned from the investment of moneys derived pursuant to this chapter shall also be deposited in the fund. These moneys shall be used by the department to carry out this chapter.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 228

An act to add Section 1297.119 to the Code of Civil Procedure, relating to arbitrators.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 1297.119 is added to the Code of Civil Procedure, to read:

1297.119. An arbitrator has the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator under any statute or contract.

The immunity afforded by this section shall supplement, and not supplant, any otherwise applicable common law or statutory immunity.

CHAPTER 229

An act to amend Section 54902 of the Government Code, and to amend Sections 2189 and 2229 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 54902 of the Government Code is amended to read:

54902. On or before December 1 of the year immediately preceding the year in which the assessments or taxes are to be levied, the statement and the map or plat shall be filed with each assessor whose roll is used for the levy and with the State Board of Equalization in Sacramento.

SEC. 2. Section 2189 of the Revenue and Taxation Code is amended to read:

2189. (a) A tax on personal property is a lien on any real property on the secured roll also belonging to the owner of the personal property, if the personal property is located upon that real property on the lien date, and if the fact of the lien is shown on the secured roll opposite the description of the real property. However, if that real property is transferred or conveyed to a bona fide purchaser for value after the lien date, but prior to the date upon which the assessment on the personal property is made, and the purchaser of that property did not own, claim, possess, or control the personal

property at any time from the lien date until the date upon which that assessment was made, the taxes on the personal property shall be placed on the unsecured roll and shall not be a lien on the real property.

(b) Any failure or omission to show the fact of a lien as described in subdivision (a) for personal property taxes on the secured roll opposite the description of real property shall not operate to invalidate those personal property taxes, but in that case the tax shall be collected in the same manner as taxes on the unsecured roll. However, if the fact of lien is erroneously entered on the secured roll opposite the description of real property belonging to someone other than the owner of the personal property on the lien date, then the delinquency penalty provided for in Chapter 4 of Part 5 shall not attach until December 10 at 5 p.m. or, if December 10th falls on Saturday, Sunday, or a holiday at 5 p.m. on the next business day.

SEC. 3. Section 2229 of the Revenue and Taxation Code is amended to read:

2229. (a) Any classification or exemption of property for purposes of ad valorem property taxation enacted by the Legislature after January 1, 1973, shall be reimbursed by the state for the 1973–1974 fiscal year and for each fiscal year thereafter.

(b) For purposes of this section the actual loss of revenue does not include potential revenue from property of a type which was not being assessed and taxed on January 1, 1973.

(c) Upon appropriation of reimbursement funds by the Legislature, each county auditor shall file a claim with the Controller on or before September 30 for reimbursement of the tax loss attributable to the exemption. The Controller shall pay on or before December 30 of each year one-half of the amount claimed and shall pay the other one-half on or before April 30. The Controller may audit, or may request the State Board of Equalization to audit, any of these claims or payments. This section does not apply to classes of property affected by Sections 988, 1152, 5303, and subdivision (c) of Section 227.

(d) The Legislative Analyst shall review any classification or exemption of property to which this section is applicable and shall report to the Legislature on the general economic effects thereof. This report shall be submitted at least one year prior to the date on which the classification or exemption is scheduled to terminate.

(e) Any claim alleging that the reimbursement requirements of this section have not been complied with shall be presented directly to the Legislature and Sections 905.2 and 945.4 of the Government Code shall not apply thereto.

CHAPTER 230

An act to add Section 6524 to the Government Code, relating to water, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 6524 is added to the Government Code, to read:

6524. Notwithstanding any other provision of law, any public agency that is a member of the South East Regional Reclamation Authority, the Aliso Water Management Agency, the South Orange County Reclamation Authority, or the San Juan Basin Authority may exercise any power granted to those entities by any of the joint powers agreements creating those entities, whether or not that public agency is a signatory to any of these joint powers agreements granting that power or is otherwise authorized by law to exercise that power, for the purpose of promoting efficiency in the administration of these joint powers entities.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for prescribed local agencies to coordinate the management of water resources and water quality as soon as possible, thereby protecting the public health and safety, it is necessary for this act to take effect immediately.

CHAPTER 231

An act to amend Section 116.420 of the Code of Civil Procedure, relating to small claims court.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 116.420 of the Code of Civil Procedure is amended to read:

116.420. (a) No claim shall be filed or maintained in small claims court by the assignee of the claim.

(b) This section does not prevent the filing or defense of an action in the small claims court by (1) a trustee in bankruptcy in the exercise of the trustee's duties as trustee, or (2) by the holder of a

security agreement, retail installment contract, or lien contract subject to the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code) or the Automobile Sales Finance Act (Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code), purchased by the holder for the holder's portfolio of investments, provided that the holder is not an assignee for the purpose of collection.

(c) This section does not prevent the filing in small claims court by a local government which is self-insured for purposes of workers' compensation and is seeking subrogation pursuant to Section 3852 of the Labor Code.

CHAPTER 232

An act to amend Section 16754.3 of the Government Code, relating to general obligation bonds.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 16754.3 of the Government Code is amended to read:

16754.3. (a) The bonds specified in the resolution shall be sold by the Treasurer, at the time fixed by the Treasurer, and upon the notice that the Treasurer may deem advisable, or at the time to which the sale shall have been so continued, either at public sale, upon sealed bids, to the bidder whose bid will result in the lowest interest cost on account of those bonds or by negotiated sale if the Treasurer determines it will result in a lower interest cost. With respect to bonds sold by the Treasurer by negotiated sales, the Treasurer shall make a finding on the public record as to why a public sale was not used. The Treasurer may sell the bonds at a price below the par value thereof, but the discount on bonds so sold shall not exceed 3 percent of the par value. The interest, if any, accrued to the date of delivery of, and payment for, the bonds shall be added to the sale price of the bonds in any case.

(b) The method of determining the lowest interest cost bid shall be prescribed in the bond resolution and shall be limited to either the net interest cost method or the true interest cost method. The net interest cost of each bid shall be determined by ascertaining the total amount of interest which the state would be required to pay under that bid, from the date of the bonds to the respective maturity dates of the bonds then offered for sale, at the interest rate or rates specified in the bid, less the total amount of the premium, if any (or plus the total amount of the discount, if any), offered by the bid. The

bid under which the amount so ascertained is the least shall be deemed to be the bid resulting in the lowest net interest cost. Under the true interest cost method, the bonds shall be awarded to the bidder submitting the lowest interest rate bid determined by the nominal interest rate that, when compounded semiannually and used to discount the debt service payments on the bonds to the date of the bonds, results in an amount equal to the price bid for the bonds, excluding interest accrued to the date of delivery. Under either method the sale shall be for cash, payable upon the delivery of the bonds in definitive form, or if the right to deliver temporary securities has been reserved, then upon the delivery of the temporary securities.

(c) This section shall apply to any bonds authorized at any statewide election held at any time after the effective date of this section. Section 16754 shall apply only to bonds authorized at elections held before the effective date of this section.

CHAPTER 233

An act relating to the Santa Monica Bay Restoration Plan.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The Santa Monica Bay is an extraordinary natural resource of national, state, and local significance.

(b) The quality of the water within the Santa Monica Bay has been degraded and has adversely affected the beneficial uses of the bay. The water quality of the bay is at risk of further impairment even though pollution from industry and sewage treatment plants has been reduced significantly over the last decade.

(c) The Santa Monica Bay Restoration Project was formed under the National Estuary Program of the federal Clean Water Act to identify critical problems of the bay and to develop and implement solutions to remedy those problems.

(d) Under the National Estuary Program, a management conference developed a comprehensive management plan for the Santa Monica Bay entitled the Santa Monica Bay Restoration Plan.

(e) The goals of the Santa Monica Bay Restoration Plan, which identifies 73 priority actions, include the protection, restoration, and enhancement of the beneficial uses of the bay.

CHAPTER 234

An act to amend Section 68926.3 of the Government Code, relating to courts.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 68926.3 of the Government Code is amended to read:

68926.3. Notwithstanding any other provision of law, fifty dollars ($50) of each fee collected in a civil case by the clerk of each court of appeal pursuant to Section 68926 shall be paid into the treasury for deposit in a special account in the General Fund to be known as the California State Law Library Special Account, which account is hereby created.

Moneys deposited in the California State Law Library Special Account during the 1992–93 fiscal year are hereby appropriated for that fiscal year to the California State Law Library for its support. In fiscal years subsequent to the 1992–93 fiscal year, these moneys shall be available for the support of the California State Law Library upon appropriation thereto by the Legislature in the annual Budget Act.

This section shall be repealed on January 1, 2000, unless a later statute which is enacted before that date extends or repeals that date.

CHAPTER 235

An act to amend Sections 22825.2 and 75002 of, and to repeal Sections 75029.2, 75030.7, 75030.8, 75075.1, 75090.1, 75090.2, 75090.3, 75093.1, 75094, and 75095.1 of, the Government Code, relating to judges.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 22825.2 of the Government Code is amended to read:

22825.2. (a) Notwithstanding Sections 22825 and 22825.1, state employees first hired on or after January 1, 1985, shall not be vested for the full employer contribution payable for annuitants unless those employees have 10 years of credited state service at time of service retirement. For purposes of this section, "state service" includes all municipal, superior, and justice court services rendered by a justice of the Supreme Court or Court of Appeal, or by a judge of the

superior court.

(b) For the purpose of meeting the vesting requirements of subdivision (a), employees of the County of Merced who became employees of the state as a result of the state's assuming firefighting functions for that county shall be credited with each complete year of service with the county which would have been credited to them by the county for the vesting of postretirement health benefits, as if that service had been with the state. Subdivision (f) of Section 22825.3 does not apply to employees of the County of Merced who became employees of the state as a result of the state assuming firefighter functions for the county on or before August 1, 1988.

(c) This section does not apply to employees of the California State University or of the Legislature.

SEC. 3. Section 75002 of the Government Code is amended to read:

75002. "Judge" means a justice of the Supreme Court or of a court of appeal, or a judge of a superior court, municipal court, or justice court. A retired justice court judge does not acquire status as a judge for the purposes of this chapter by reason of designation as a judge pro tempore of, or assignment by the Chairperson of the Judicial Council to, any of these courts.

"Judge" shall not mean a justice court judge who elected pursuant to Section 75029.5 to be restored to membership in the Public Employees' Retirement System.

SEC. 4. Section 75029.2 of the Government Code is repealed.

SEC. 5. Section 75030.7 of the Government Code is repealed.

SEC. 6. Section 75030.8 of the Government Code is repealed.

SEC. 7. Section 75075.1 of the Government Code is repealed.

SEC. 8. Section 75090.1 of the Government Code is repealed.

SEC. 9. Section 75090.2 of the Government Code is repealed.

SEC. 10. Section 75090.3 of the Government Code is repealed.

SEC. 11. Section 75093.1 of the Government Code is repealed.

SEC. 12. Section 75094 of the Government Code is repealed.

SEC. 13. Section 75095.1 of the Government Code is repealed.

CHAPTER 236

An act to amend Section 1597.14 of the Health and Safety Code, relating to child day care facilities.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 1597.14 of the Health and Safety Code is amended to read:

1597.14. (a) Notwithstanding Section 1596.858, in the event of a

sale of a licensed child day care center where the sale will result in a new license being issued, the sale and transfer of property and business shall be subject to both of the following:

(1) The licensee shall provide written notice to the department and to the child's parent or his or her legal guardian of the licensee's intent to sell the child day care center at least 30 days prior to the transfer of the property or business, or at the time that a bona fide offer is made, whichever period is longer.

(2) The licensee shall, prior to entering into an admission agreement, inform the child's parent or his or her legal guardian, admitted to the facility after notification to the department, of the licensee's intent to sell the property or business.

(b) Except as provided in subdivision (e), the property and business shall not be transferred until the buyer qualifies for a license or provisional license pursuant to this chapter.

(1) The seller shall notify, in writing, a prospective buyer of the necessity to obtain a license, as required by this chapter, if the buyer's intent is to continue operating the facility as a child day care center. The seller shall send a copy of this written notice to the licensing agency.

(2) The prospective buyer shall submit an application for a license, as specified in Section 1596.95, within five days of the acceptance of the offer by the seller.

(c) No transfer of the facility shall be permitted until 30 days have elapsed from the date when notice has been provided to the department pursuant to paragraph (1) of subdivision (a).

(d) The department shall give priority to applications for licensure that are submitted pursuant to this section in order to ensure timely transfer of the property and business. The department shall make a decision within 60 days after a complete application is submitted on whether to issue a license pursuant to Section 1596.95.

(e) If the parties involved in the transfer of the property and business fully comply with this section, then the transfer may be completed and the buyer shall not be considered to be operating an unlicensed facility while the department makes a final determination on the application for licensure.

CHAPTER 237

An act to amend and renumber Section 383 of the Code of Civil Procedure, relating to class actions, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 15, 1994. Filed with Secretary of State July 18, 1994.]

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

SECTION 1. Section 383 of the Code of Civil Procedure is amended and renumbered to read:

384. (a) It is the intent of the Legislature in enacting this section to ensure that the unpaid residuals in class action litigation are distributed, to the extent possible, in a manner designed either to further the purposes of the underlying causes of action, or to promote justice for all Californians. The Legislature finds that the use of funds collected by the State Bar pursuant to this section for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes.

(b) Except as provided in subdivision (d), prior to the entry of any judgment in a class action established pursuant to Section 382, the court shall determine the total amount that will be payable to all class members, if all class members are paid the amount to which they are entitled pursuant to the judgment. The court shall also set a date when the parties shall report to the court the total amount that was actually paid to the class members. After the report is received, the court shall amend the judgment to direct the defendant to pay the sum of the unpaid residue, plus interest on that sum at the legal rate of interest from the date of entry of the initial judgment, in any manner the court determines is consistent with the objectives and purposes of the underlying cause of action, including to child advocacy programs and to the California Legal Corps, as established pursuant to Section 6034 of the Business and Professions Code. The court shall ensure that notice is given to the State Bar of California of any such order.

(c) Nothing in this section shall create an obligation or pledge of the credit of the State Bar of California. Neither the State Bar nor its officers and employees shall be liable for damage or injury arising out of any act or omission in the implementation or administration of this section.

(d) This section shall not apply to any class action brought against any public entity, as defined in Section 811.2 of the Government Code, or against any public employee, as defined in Section 811.4 of the Government Code. Provided, however, that this section shall not be construed to abrogate any equitable cy pres remedy which may be available in any class action with regard to all or part of the residue.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to avoid unintended fiscal liability for the State of California and other public entities, it is necessary that this act take effect immediately.

CHAPTER 238

An act to amend Section 12804 of the Government Code, and to amend Sections 63 and 74 of the Military and Veterans Code, relating to the Department of Veterans Affairs, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 19, 1994. Filed with Secretary of State July 20, 1994.]

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

SECTION 1. Section 12804 of the Government Code is amended to read:

12804. The Agriculture and Services Agency is hereby renamed the State and Consumer Services Agency.

The State and Consumer Services Agency consists of the following: the Department of General Services; the Department of Consumer Affairs; the Franchise Tax Board; the Public Employees' Retirement System; the State Fire Marshal; the State Teachers' Retirement System; the Department of Fair Employment and Housing; the California Museum of Science and Industry; and the State Building and Standards Commission.

SEC. 2. Section 63 of the Military and Veterans Code is amended to read:

63. There is in the state government a Department of Veterans Affairs.

SEC. 3. Section 74 of the Military and Veterans Code is amended to read:

74. (a) The chief administrative officer of the Department of Veterans Affairs shall be the Director of Veterans Affairs who shall be a civil executive officer.

(b) The Director of Veterans Affairs shall be a veteran as "veteran" is defined in Section 18540.4 of the Government Code.

SEC. 4. This is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order, as soon as possible, to more efficiently protect the desperate needs of veterans and their dependents, numbering

approximately 9,000,000 in California, and to enable the Department of Veterans Affairs to fulfill its statutory responsibilities, it is necessary that this act take effect immediately.

CHAPTER 239

An act to amend Section 35145.5 of, and to add Section 35147 to, the Education Code, relating to schools, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 35145.5 of the Education Code is amended to read:

35145.5. It is the intent of the Legislature that members of the public be able to place matters directly related to school district business on the agenda of school district governing board meetings. Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the governing board on any item of interest to the public, before or during the governing board's consideration of the item, that is within the subject matter jurisdiction of the governing board. Governing boards shall adopt reasonable regulations to insure that this intent is carried out. The regulations may specify reasonable procedures to insure the proper functioning of governing board meetings.

This subdivision shall not preclude the taking of testimony at regular meetings on matters not on the agenda which any member of the public may wish to bring before the board, provided that, except as authorized by Section 54954.2 of the Government Code, no action is taken by the board on those matters at the same meeting at which the testimony is taken. Nothing in this paragraph shall be deemed to limit further discussion on the same subject matter at a subsequent meeting.

SEC. 2. Section 35147 is added to the Education Code, to read:

35147. (a) Except as specified in this section, any meeting of the councils or committees specified in subdivision (b) is exempt from the provisions of this article, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Division 3 of Title 2 of the Government Code), and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code).

(b) The councils and schoolsite advisory committees established pursuant to Sections 52012, 52065, 52176, and 52852, subdivision (b) of Section 54425, Sections 54444.2, 54724, and 62002.5, and committees formed pursuant to Section 11503 or Section 2604 of Title 25 of the

United States Code, are subject to this section.

(c) Any meeting held by a council or committee specified in subdivision (b) shall be open to the public and any member of the public shall be able to address the council or committee during the meeting on any item within the subject matter jurisdiction of the council or committee. Notice of the meeting shall be posted at the schoolsite, or other appropriate place accessible to the public, at least 72 hours before the time set for the meeting. The notice shall specify the date, time, and location of the meeting and contain an agenda describing each item of business to be discussed or acted upon. The council or committee may not take any action on any item of business unless that item appeared on the posted agenda or unless the council or committee members present, by unanimous vote, find that there is a need to take immediate action and that the need for action came to the attention of the council or committee subsequent to the posting of the agenda. Questions or brief statements made at a meeting by members of the council, committee, or public that do not have a significant effect on pupils or employees in the school or school district or that can be resolved solely by the provision of information need not be described on an agenda as items of business. If a council or committee violates the procedural meeting requirements of this section and upon demand of any person, the council or committee shall reconsider the item at its next meeting, after allowing for public input on the item.

(d) Any materials provided to a schoolsite council shall be made available to any member of the public who requests the materials pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify how legislation that became effective on April 1, 1994, applies to schools, it is necessary that this act take effect immediately.

CHAPTER 240

An act to amend Section 18613.1 of, and to add Section 18613.4 to, the Health and Safety Code, relating to housing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 18613.1 of the Health and Safety Code is amended to read:

18613.1. The requirements for any installation of a manufactured home or mobilehome shall not exceed the requirements set forth in Sections 18613 and 18613.4.

SEC. 2. Section 18613.4 is added to the Health and Safety Code, to read:

18613.4. (a) All manufactured homes or mobilehomes, when initially installed or subsequently reinstalled on a different lot pursuant to Section 18613, shall be installed to resist, in conjunction with vertical loads, either forces from horizontal wind pressures of 15 pounds per square foot or the design wind load of the home, whichever is greater.

(b) For the purposes of complying with subdivision (a), all manufactured homes or mobilehomes with manufacturer's installation instructions that include requirements for tiedowns shall be installed in accordance with all of the following:

(1) The manufacturer's installation instructions.

(2) If not included in the manufacturer's installation instructions, a minimum of four additional tiedowns per section shall be installed to resist the same wind forces in the longitudinal direction of the manufactured home or mobilehome as the total of those forces required to be resisted in the transverse direction. No portion of the tiedown extending beyond the vertical plane of an exterior wall of the manufactured home or mobilehome shall be above the ground.

(3) When used, concrete or steel piers shall have mechanical connections to the home and their footing that resist separation of the supports from the home and the footing. Mechanical connections shall not require modifications to the manufactured home or mobilehome.

(c) For the purposes of complying with subdivision (a), when no manufacturer's installation instructions are available that include requirements for tiedowns, the manufactured home or mobilehome shall be installed in accordance with both of the following:

(1) Department regulations, which shall include requirements for tiedowns meeting the standards in subdivision (a).

(2) The requirements specified in paragraphs (2) and (3) of subdivision (b).

(d) For the purposes of complying with subdivision (a), all manufactured homes or mobilehomes may be installed or reinstalled in accordance with plans and specifications signed by a licensed architect or engineer that meet the requirements of this section.

(e) Manufactured homes or mobilehomes installed before the effective date of the act that added this section that do not meet the standards in subdivision (a) and need to be reinstalled due to damage caused by wind or seismic forces shall be reinstalled to meet the requirements of subdivision (a) and paragraphs (2) and (3) of

subdivision (b), if federal funds are available for grants or direct payment of the additional installation costs.

(f) Nothing in this section prohibits the use of alternative materials, installation methods, devices, et cetera, as permitted in Section 18305, as long as the forces specified in subdivision (a) and in paragraph (2) of subdivision (b) are resisted.

(g) The department shall adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code in order to implement the purposes of this section.

(h) The department shall develop standards for mechanical connections for concrete block supports that connect the blocks to the manufactured homes or mobilehomes and their footing and resist the separation of the supports from the home and the footing. By the adoption of the act that adds this subdivision, it is not the intent of the Legislature that the concrete blocks used as vertical supports be required to be mechanically attached to the manufactured homes or mobilehomes and their footings.

(i) This section shall not apply to the installation of any manufactured home or mobilehome for which escrow has been opened in accordance with Section 18035 prior to the operative date of the act that adds this section.

(j) This section shall become operative 60 days after the date that the act that adds this section is chaptered.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure that as many manufactured homes and mobilehomes as possible are protected at the earliest possible time from sudden devastation by earthquakes, it is necessary that this act take effect immediately.

CHAPTER 241

An act to add Section 57087.3 to the Government Code, and to amend Sections 97.35 and 97.38 of the Revenue and Taxation Code, relating to local government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 57087.3 is added to the Government Code, to read:

57087.3. The merger of a subsidiary district with a city, of which the city council is also the governing board of that subsidiary district, shall not be subject to Sections 99 and 99.1 of the Revenue and Taxation Code if the city council adopts a resolution that states that the city shall do all of the following:

(a) Continue providing the services of the subsidiary district at the same level to those areas outside the city's boundaries, but within the territory of the subsidiary district, as the services provided for territory within the city limits.

(b) Assume all assets of the subsidiary district.

(c) Assume all liabilities of the subsidiary district.

(d) Assume all ad valorem taxes, other accounts receivable, and other revenues of the subsidiary district.

SEC. 2. Section 97.35 of the Revenue and Taxation Code is amended to read:

97.35. (a) In each county, other than the County of Ventura, having within its boundaries a qualifying city, the computations made pursuant to Section 97, for the 1989–90 fiscal year and each fiscal year thereafter, shall be modified as follows:

With respect to tax rate areas within the boundaries of a qualifying city, there shall be excluded from the aggregate amount of "property tax revenue allocated pursuant to this chapter to local agencies, other than for a qualifying city, in the prior fiscal year," an amount equal to the sum of the amounts calculated pursuant to the TEA formula.

(b) (1) Except as otherwise provided in this section, each qualifying city shall, for the 1989–90 fiscal year and each year thereafter, be allocated by the auditor an amount determined pursuant to the TEA formula.

(2) For each qualifying city, the auditor shall, for the 1989–90 fiscal year and each year thereafter, allocate the amount determined pursuant to the TEA formula to all tax rate areas within that city in proportion to each tax rate area's share of the total assessed value in the city for the applicable fiscal year, and the amount so determined shall be subtracted from the county's proportionate share of property tax revenue for that fiscal year within those tax rate areas.

(3) After making the allocations pursuant to paragraphs (1) and (2), but before making the calculations pursuant to Section 98, the auditor shall, for all tax rate areas in the qualifying city, calculate the proportionate share of property tax revenue allocated pursuant to this section and Section 97 in the 1989–90 fiscal year and each fiscal year thereafter to each jurisdiction in the tax rate area.

(4) In lieu of making the allocations of annual tax increment pursuant to subdivision (e) of Section 98, the auditor shall, for the 1989–90 fiscal year and each year thereafter, allocate the amount of property tax revenue determined pursuant to subdivision (d) of Section 98 to jurisdictions in the tax rate area using the proportionate shares derived pursuant to paragraph (3).

(5) For purposes of the calculations made pursuant to Section 97, in the 1990–91 fiscal year and each fiscal year thereafter, the amounts that would have been allocated to qualifying cities pursuant to this subdivision shall be deemed to be the "amount of property tax revenue allocated in the prior fiscal year."

(c) "TEA formula" means the Tax Equity Allocation formula, and shall be calculated by the auditor for each qualifying city as follows:

(1) For the 1988–89 fiscal year and each fiscal year thereafter, the auditor shall determine the total amount of property tax revenue to be allocated to all jurisdictions in all tax rate areas within the qualifying city, before the allocation and payment of funds in that fiscal year to a community redevelopment agency within the qualifying city, as provided in subdivision (b) of Section 33670 of the Health and Safety Code.

(2) The auditor shall determine the total amount of funds allocated in each fiscal year to a community redevelopment agency in accordance with subdivision (b) of Section 33670 of the Health and Safety Code.

(3) The auditor shall determine the total amount of funds paid in each fiscal year by a community redevelopment agency within the city to jurisdictions other than the city pursuant to subdivision (b) of Section 33401 and Section 33676 of the Health and Safety Code, and the cost to the redevelopment agency of any land or facilities transferred and any amounts paid to jurisdictions other than the city to assist in the construction or reconstruction of facilities pursuant to an agreement entered into under Section 33401 or 33445.5 of the Health and Safety Code.

(4) The auditor shall subtract the amount determined in paragraph (3) from the amount determined in paragraph (2).

(5) The auditor shall subtract the amount determined in paragraph (4) from the amount determined in paragraph (1).

(6) The amount computed in paragraph (5) shall be multiplied by the following percentages in order to determine the TEA formula amount to be distributed to the qualifying city in each fiscal year:

(A) For the first fiscal year in which the qualifying city receives a distribution pursuant to this section, 1 percent of the amount determined in paragraph (5).

(B) For the second fiscal year in which the qualifying city receives a distribution pursuant to this section, 2 percent of the amount determined in paragraph (5).

(C) For the third fiscal year in which the qualifying city receives a distribution pursuant to this section, 3 percent of the amount determined in paragraph (5).

(D) For the fourth fiscal year in which the qualifying city receives a distribution pursuant to this section, 4 percent of the amount determined in paragraph (5).

(E) For the fifth fiscal year in which the qualifying city receives a distribution pursuant to this section, 5 percent of the amount determined in paragraph (5).

(F) For the sixth fiscal year in which the qualifying city receives a distribution pursuant to this section, 6 percent of the amount determined in paragraph (5).

(G) For the seventh fiscal year and each fiscal year thereafter in which the city receives a distribution pursuant to this section, 7 percent of the amount determined in paragraph (5).

(d) "Qualifying city" means any city, except a qualifying city as defined in Section 97.3, which incorporated prior to June 5, 1987, and had an amount of property tax revenue allocated to it pursuant to subdivision (a) of Section 97 in the 1988–89 fiscal year which is less than 7 percent of the amount of property tax revenue computed as follows:

(1) The auditor shall determine the total amount of property tax revenue allocated to the city in the 1988–89 fiscal year.

(2) The auditor shall subtract the amount in the 1988–89 fiscal year determined in paragraph (3) of subdivision (c) from the amount determined in paragraph (2) of subdivision (c).

(3) The auditor shall subtract the amount determined in paragraph (2) from the amount of property tax revenue determined in paragraph (1) of subdivision (c).

(4) The auditor shall divide the amount of property tax revenue determined in paragraph (1) of this subdivision by the amount of property tax revenue determined in paragraph (3) of this subdivision.

(5) If the quotient determined in paragraph (4) of this subdivision is less than 0.07, the city is a qualifying city. If the quotient determined in that paragraph is equal to or greater than 0.07, the city is not a qualifying city.

(e) The auditor may assess each qualifying city its proportional share of the actual costs of making the calculations required by this section, and may deduct that assessment from the amount allocated pursuant to subdivision (b). For purposes of this subdivision, a qualifying city's proportional share of the auditor's actual costs shall not exceed the proportion it receives of the total amounts excluded in the county pursuant to subdivision (a).

(f) Notwithstanding subdivision (b), in any fiscal year in which a qualifying city is to receive a distribution pursuant to this section, the

auditor shall reduce the actual amount distributed to the qualifying city by the sum of the following:

(1) The amount of property tax revenue which was exchanged between the county and the qualifying city as a result of negotiation pursuant to Section 99.6.

(2) The amount of revenue not collected by the qualifying city in the first fiscal year following the city's reduction after January 1, 1988, of the tax rate or tax base of any locally imposed general or special tax, except any tax which was imposed after January 1, 1988. In the case of a tax which existed before January 1, 1988, this paragraph shall apply only with respect to an amount attributable to a reduction of the rate or base to a level lower than the rate or base applicable on January 1, 1988. The amount so computed by the auditor shall constitute a reduction in the amount of property tax revenue distributed to the qualifying city pursuant to this section in each succeeding fiscal year. That amount shall be aggregated with any additional amount computed pursuant to this paragraph as the result of the city's reduction in any subsequent year of the tax rate or tax base of the same or any other locally imposed general or special tax.

(3) The amount of property tax revenue received pursuant to this chapter in excess of the amount allocated for the 1986–87 fiscal year by all special districts that are governed by the city council of the qualifying city or whose governing body is the same as the city council of the qualifying city with respect to all tax rate areas within the boundaries of the qualifying city. Notwithstanding this paragraph, commencing with the 1994–95 fiscal year, the auditor shall not reduce the amount distributed to a qualifying city under this section by reason of that city becoming the successor agency to a special district that is dissolved, merged with that city, or becomes a subsidiary district of that city, on or after July 1, 1994.

(g) If the auditor determines that the amount to be distributed to a qualifying city pursuant to subdivision (b), as modified by subdivisions (e) and (f), would result in a qualifying city having proceeds of taxes in excess of its appropriation limit, the auditor shall reduce the amount, on a dollar-for-dollar basis, by the amount which exceeds the city's appropriations limit.

(h) The amount not distributed to the tax rate areas of a qualifying city as a result of this section shall be distributed by the auditor to the county.

(i) Notwithstanding any other provision of this section, no qualifying city shall be distributed an amount pursuant to this section which is less than the amount the city would have been allocated without the application of the TEA formula.

(j) Notwithstanding any other provision of this section, the auditor shall not distribute any amount determined pursuant to this section to any qualifying city which has in the prior fiscal year used any revenues or issued bonds for the construction, acquisition, or development, of any facility which is defined in Section 103(b)(4), 103(b)(5), or 103(b)(6) of the Internal Revenue Code of 1954 prior

to the enactment of the Tax Reform Act of 1986 (P.L. 99-514) and is no longer eligible for tax-exempt financing.

SEC. 3. Section 97.38 of the Revenue and Taxation Code is amended to read:

97.38. (a) In the County of Ventura, the computations made pursuant to Section 97, for the 1989–90 fiscal year and each year thereafter, shall be modified as follows:

With respect to tax rate areas, except excluded tax rate areas, within the boundaries of a qualifying city, there shall be excluded from the aggregate amount of "property tax revenue allocated pursuant to this chapter to local agencies, other than for a qualifying city, in the prior fiscal year," an amount equal to the sum of the amounts calculated pursuant to the TEA formula.

(b) (1) Each qualifying city shall, for the 1989–90 fiscal year and each fiscal year thereafter, be allocated by the auditor an amount determined pursuant to the TEA formula.

(2) For each qualifying city, the auditor shall, for the 1989–90 fiscal year and each year thereafter, distribute the amount determined pursuant to the TEA formula to all tax rate areas, except excluded tax rate areas, within that city in proportion to each tax rate area's share of the total assessed value in the city for the applicable fiscal year, and the amount so determined shall be subtracted from the county's proportionate share of the property tax revenue for that fiscal year within those tax rate areas.

(3) After making the allocations pursuant to paragraphs (1) and (2), but before making the calculations pursuant to Section 98, the auditor shall, for all tax rate areas, except excluded tax rate areas, in the qualifying city, calculate the proportionate share of property tax revenue allocated pursuant to this section and Section 97 in the 1989–90 fiscal year and each fiscal year thereafter to each jurisdiction in the tax rate area.

(4) In lieu of making the allocations of annual tax increment pursuant to subdivision (e) of Section 98, the auditor shall for the 1989–90 fiscal year and each fiscal year thereafter, allocate the amount of property tax revenue determined pursuant to subdivision (d) of Section 98 to jurisdictions in the tax rate area, except an excluded tax rate area, using the proportionate shares derived pursuant to paragraph (3).

(5) For purposes of the calculations made pursuant to Section 97, in the 1990–91 fiscal year and each fiscal year thereafter, the amounts that would have been allocated to all tax rate areas, except excluded tax rate areas, of qualifying cities pursuant to this subdivision shall be deemed to be the "amount of property tax revenue allocated to those tax rate areas in the prior fiscal year."

(c) "TEA formula" means the Tax Equity Allocation formula, and shall be calculated by the auditor for each qualifying city as follows:

(1) For the 1988–89 fiscal year and each fiscal year thereafter, the auditor shall determine the total amount of property tax revenue to be allocated to all jurisdictions in all tax rate areas, except excluded

tax rate areas, within the qualifying city, before the allocation and payment of funds in that fiscal year to a community redevelopment agency within the qualifying city, as provided in subdivision (b) of Section 33670 of the Health and Safety Code.

(2) The auditor shall determine the amount of funds allocated in each fiscal year to those tax rate areas, except excluded tax rate areas, within a community redevelopment agency in accordance with subdivision (b) of Section 33670 of the Health and Safety Code.

(3) (A) The auditor shall determine the total amount of funds paid in each fiscal year by a community redevelopment agency within the city to jurisdictions other than the city pursuant to subdivision (b) of Section 33401 and Section 33676 of the Health and Safety Code, and the cost to the redevelopment agency of any land or facilities transferred and any amounts paid to jurisdictions other than the city to assist in the construction or reconstruction of facilities pursuant to an agreement entered into under Section 33401 or 33445.5 of the Health and Safety Code.

(B) Of the total amount determined in subparagraph (A), the auditor shall compute a proportionate amount to be attributed to all tax rate areas, except excluded tax rate areas, within the community redevelopment agency. That proportionate amount shall be equal to that proportion which the amount determined in paragraph (2) in each fiscal year bears to the total amount of funds allocated in each fiscal year to a community redevelopment agency in accordance with subdivision (b) of Section 33670 of the Health and Safety Code.

(4) The auditor shall subtract the amount determined in subparagraph (B) of paragraph (3) from the amount determined in paragraph (2).

(5) The auditor shall subtract the amount determined in paragraph (4) from the amount determined in paragraph (1).

(6) The amount computed in paragraph (5) shall be multiplied by the following percentages in order to determine the TEA formula amount to be distributed to the qualifying city in each fiscal year:

(A) For the first fiscal year in which the qualifying city receives a distribution pursuant to this section, 1 percent of the amount determined in paragraph (5).

(B) For the second fiscal year in which the qualifying city receives a distribution pursuant to this section, 2 percent of the amount determined in paragraph (5).

(C) For the third fiscal year in which the qualifying city receives a distribution pursuant to this section, 3 percent of the amount determined in paragraph (5).

(D) For the fourth fiscal year and each fiscal year thereafter in which the qualifying city receives a distribution pursuant to this section, 4 percent of the amount determined in paragraph (5).

(d) For purposes of this section, "excluded tax rate area" means either of the following:

(1) Any tax rate area included in territory annexed by the qualifying city and allocated a prescribed percentage of property tax

revenue pursuant to an existing agreement between the qualifying city and the county.

(2) Any tax rate area described in paragraph (1) which was detached from the county library district and which is also allocated an additional prescribed percentage of property tax revenue pursuant to an existing agreement between the qualifying city and the county.

(e) (1) All existing agreements between the qualifying city and the county covering the allocation of property tax revenues to tax rate areas described in subdivision (d) shall remain in force.

(2) All existing agreements between the qualifying city and the county covering the allocation of property tax revenues to tax rate areas which were detached from the county library district but are not included in territory which was annexed by the qualifying city shall remain in force.

(3) All allocations to those tax rate areas described in subdivision (d), including allocations of annual tax increments, made pursuant to the existing agreements between the qualifying city and the county shall be governed by subdivision (a) of Section 97 and Section 98.

(4) All allocations to those tax rate areas described in paragraph (2), including allocations of annual tax increments, made pursuant to the existing agreements between the qualifying city and the county shall be governed by subdivision (a) of Section 97 and Section 98. However, the tax rate areas referred to in this paragraph shall also be distributed an amount of property tax revenue determined pursuant to the TEA formula which is over and above the amount allocated as provided in the preceding sentence.

(f) "Qualifying city" means any city which incorporated prior to June 5, 1987, and had an amount of property tax revenue allocated to it pursuant to subdivision (a) of Section 97 in the 1988–89 fiscal year which is less than 4 percent of the amount of property tax revenue computed as follows:

(1) The auditor shall determine the total amount of property tax revenue allocated to all tax rate areas, except excluded tax rate areas, in the city in the 1988–89 fiscal year.

(2) The auditor shall subtract the amount in the 1988–89 fiscal year determined in paragraph (3) of subdivision (c) from the amount determined in paragraph (2) of subdivision (c).

(3) The auditor shall subtract the amount determined in paragraph (2) from the amount of property tax revenue in paragraph (1) of subdivision (c).

(4) The auditor shall divide the amount of property tax revenue determined in paragraph (1) of this subdivision by the amount of property tax revenue determined in paragraph (3) of this subdivision.

(5) If the quotient determined in paragraph (4) of this subdivision is less than 0.04, the city is a qualifying city. If the quotient determined in that paragraph is equal to or greater than 0.04, the city

is not a qualifying city.

(g) The auditor may assess each qualifying city its proportional share of the actual costs of making the calculations required by this section, and may deduct that assessment from the amount allocated pursuant to subdivision (b). For purposes of this subdivision, a qualifying city's proportional share of the auditor's actual costs shall not exceed the proportion it receives of the total amounts excluded in the county pursuant to subdivision (a).

(h) Notwithstanding subdivision (b), in any fiscal year in which a qualifying city receives a distribution pursuant to this section, the auditor shall reduce the actual amount distributed to the qualifying city by the amount of revenue not collected by the qualifying city in the first fiscal year following the city's reduction after January 1, 1988, of the tax rate or tax base of any locally imposed general or special tax. The amount so computed by the auditor shall constitute a reduction in the amount of property tax revenue distributed to the qualifying city pursuant to this section in each succeeding fiscal year. That amount shall be aggregated with any additional amount computed pursuant to this paragraph as the result of the city's reduction in any subsequent year of the tax rate or tax base of the same or any other locally imposed general or special tax.

(i) If the auditor determines that the amount to be distributed to a qualifying city pursuant to subdivision (b), as modified by subdivisions (g) and (h), would result in a qualifying city having proceeds of taxes in excess of its appropriation limit, the auditor shall reduce the amount, on a dollar-for-dollar basis, by the amount which exceeds the city's appropriations limit.

(j) The amount not distributed to tax rate areas, except excluded tax rate areas, of a qualifying city as a result of this section shall be distributed by the auditor to the county.

(k) Notwithstanding any other provision of this section, no qualifying city shall be distributed an amount pursuant to this section which is less than the amount the city would have been allocated without the application of the TEA formula.

(*l*) Notwithstanding any other provision of this section, commencing with the 1994–95 fiscal year, the auditor shall not reduce the amount distributed to a qualifying city under this section by reason of that city becoming the successor agency to a special district that is dissolved, merged with that city, or becomes a subsidiary district of that city, on or after July 1, 1994.

(m) The amount not distributed as a result of this section to the tax rate areas, except excluded tax rate areas, in each qualifying city shall be allocated by the auditor to the county.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to further the timely consolidations of cities and special districts undertaken as cost-saving measures in response to

budgetary shortfalls projected for the 1994–95 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 242

An act to amend Section 870 of the Code of Civil Procedure, and to add Part 8 (commencing with Section 17700) to Division 4 of Title 2 of the Government Code, relating to validating proceedings, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 870 of the Code of Civil Procedure is amended to read:

870. (a) The judgment, if no appeal is taken, or if taken and the judgment is affirmed, shall, notwithstanding any other provision of law including, without limitation, Sections 473 and 473.5, thereupon become and thereafter be forever binding and conclusive, as to all matters therein adjudicated or which at that time could have been adjudicated, against the agency and against all other persons, and the judgment shall permanently enjoin the institution by any person of any action or proceeding raising any issue as to which the judgment is binding and conclusive.

(b) Notwithstanding any other provision of law including, without limitation, Section 901 and any rule of court, no appeal shall be allowed from any judgment entered pursuant to this chapter unless a notice of appeal is filed within 30 days after the notice of entry of the judgment, or, within 30 days after the entry of the judgment if there is no answering party. If there is no answering party, only issues related to the jurisdiction of the court to enter a judgment in the action pursuant to this chapter may be raised on appeal.

SEC. 2. Part 8 (commencing with Section 17700) is added to Division 4 of Title 2 of the Government Code, to read:

PART 8. VALIDATING PROCEEDINGS

17700. The state or any state board, department, agency, or authority, including without limitation, the State Public Works Board, may bring an action to determine the validity of its bonds, warrants, contracts, obligations, or evidences of indebtedness pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. For the purposes of Section 860 of the Code of Civil Procedure, any action initiated pursuant to this section shall be brought in the Superior Court of the County of

Sacramento.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the state may be authorized to bring a validating proceeding, and in order for a public agency to establish the validity of its obligations at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 243

An act to amend Section 1547 of the Penal Code, and to add Section 4417.5 to the Public Resources Code, relating to fire protection, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 1547 of the Penal Code is amended to read:

1547. (a) The Governor may offer a reward of not more than fifty thousand dollars ($50,000), payable out of the General Fund, for information leading to the arrest and conviction of any of the following:

(1) Any convict who has escaped from a state prison, prison camp, prison farm, or the custody of any prison officer or employee or as provided in Section 3059 or 4530.

(2) Any person who has committed, or is charged with the commission of, an offense punishable by death.

(3) Any person engaged in the robbery or hijacking of, or any attempt to rob or hijack, any person upon or in charge of, in whole or in part, any public conveyance engaged at the time in carrying passengers within this state.

(4) Any person who kills, assaults with a deadly weapon, or inflicts serious bodily harm upon a police officer who is acting in the line of duty.

(5) Any person who has committed a crime involving the burning or bombing of public property, including any public hospital housed in a privately owned facility.

(6) Any person who has committed a crime involving the burning or bombing of any private hospital. A reward may be offered by the Governor in conjunction with such a crime only if a reward in conjunction with the same crime is offered by the hospital, or any other public or private donor on its behalf. The amount of the reward offered by the Governor shall not exceed the aggregate amount

offered privately, or fifty thousand dollars ($50,000), whichever is less. Nothing in this paragraph shall preclude a private hospital, or any public or private donor on its behalf, from offering a reward in an amount exceeding fifty thousand dollars ($50,000). If a person providing information for a reward under this paragraph so requests, his or her name and address shall remain confidential. This confidentiality, however, shall not preclude or obstruct the investigations of law enforcement authorities.

(7) Any person who commits a violation of Section 11413.

(8) Any person who commits a violation of Section 207.

(9) Any person who has committed a crime involving the burning or bombing of any bookstore or public or private library not subject to Section 11413. A reward may be offered by the Governor in conjunction with such a crime only if a reward in conjunction with the same crime is offered by the bookstore or library, or any other public or private donor on its behalf. The amount of the reward offered by the Governor shall not exceed the aggregate amount offered privately, or fifty thousand dollars ($50,000), whichever is less. Nothing in this paragraph shall preclude a bookstore or public or private library, or any public or private donor on its behalf, from offering a reward in an amount exceeding fifty thousand dollars ($50,000). If a person providing information for a reward under this paragraph so requests, his or her name and address shall remain confidential. This confidentiality, however, shall not preclude or obstruct the investigations of law enforcement authorities.

(10) Any person who commits a violation of Section 454 or 463.

(11) Any person who willfully and maliciously sets fire to, or who attempts to willfully and maliciously set fire to, any property that is included within a hazardous fire area designated by the State Board of Forestry pursuant to Section 4252 of the Public Resources Code or by the Director of Forestry and Fire Protection pursuant to Section 4253 of the Public Resources Code, if the fire, or attempt to set a fire, results in death or great bodily injury to anyone, including fire protection personnel, or if the fire causes substantial structural damage.

(b) The reward shall be paid to the person giving the information, immediately upon the conviction of the person so arrested.

(c) As used in this section, "hijacking" means an unauthorized person causing, or attempting to cause, by violence or threat of violence, a public conveyance to go to an unauthorized destination.

SEC. 2. Section 4417.5 is added to the Public Resources Code, to read:

4417.5. (a) For the purpose of obtaining information leading to the arrest and conviction of persons who willfully and maliciously set fire to, or who attempt to willfully and maliciously set fire to, any property which is included within a state responsibility area, as defined in Section 4102, including a hazardous fire area designated by the board pursuant to Section 4252 or by the director pursuant to Section 4253, the department shall, during the fire season, make a

toll-free 800 telephone number available for, and establish, a program to protect the anonymity of persons providing that information and to facilitate the identification of persons who are eligible for the payment of rewards authorized pursuant to Section 1547 of the Penal Code and Section 4417.

(b) The department may cooperate, and enter into interagency agreements, with other state agencies in carrying out this section, including, but not limited to, the Cal-TIP program of the Department of Fish and Game.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Due to extreme drought conditions, California is facing the potential for an unusually severe fire season and has already experienced numerous damaging wildfires much earlier than normal. In order to prevent and discourage wildland fires started by arsonists, it is necessary that this act take effect immediately.

CHAPTER 244

An act to add Section 7262.7 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 7262.7 is added to the Revenue and Taxation Code, to read:

7262.7. (a) In addition to the tax levied pursuant to Part 1.5 (commencing with Section 7200), and any other tax authorized by this part, the Board of Supervisors of the County of Stanislaus may impose a transactions and use tax by adoption of an ordinance in accordance with this part if each of the following conditions are met:

(1) The ordinance imposing the tax is submitted to and approved by the voters of the county in accordance with Article 3.7 (commencing with Section 53720) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(2) The tax is imposed at a rate of one-eighth of 1 percent for a period not to exceed five years.

(3) The revenues collected from the tax shall be used only for funding countywide library programs and operations.

(b) The Board of Supervisors of the County of Stanislaus may impose a transactions and use tax in any succeeding period not to exceed five years per period if all of the conditions specified in subdivision (a) are met for that succeeding period.

CHAPTER 245

An act to add Section 1374 to the Civil Code, relating to common interest developments.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 1374 is added to the Civil Code, to read:

1374. Nothing in this title may be construed to apply to a development wherein there does not exist a common area as defined in subdivision (b) of Section 1351, nor may this title be construed to confer standing pursuant to Section 383 of the Code of Civil Procedure to an association created for the purpose of managing a development wherein there does not exist a common area.

This section is declaratory of existing law.

CHAPTER 246

An act to amend Section 1596.866 of, and to add Sections 1797.113 and 1797.191 to, the Health and Safety Code, relating to child day care, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 1596.866 of the Health and Safety Code is amended to read:

1596.866. (a) In addition to any other required training, at least one director or teacher at each day care center, and each family day care home licensee who provides care shall have at least 15 hours of training on preventive health practices. The training shall include pediatric cardiopulmonary resuscitation, pediatric first aid, recognition, management, and prevention of infectious diseases, including immunizations, and prevention of childhood injuries. The training may include training in sanitary food handling, child nutrition, emergency preparedness and evacuation, caring for children with special needs, and identification and reporting of signs and symptoms of child abuse.

(b) A day care center director shall ensure that at least one staff member who has a current certificate in pediatric first aid and pediatric cardiopulmonary resuscitation issued by a training program that has been approved by the Emergency Medical

Services Authority pursuant to this section and Section 1797.191 shall be available at all times when children are present at the facility, or when children are offsite of the facility for facility activities. Similarly, a licensee of a large family day care home shall ensure that at least one person who has a current certificate in pediatric first aid and pediatric cardiopulmonary resuscitation shall be available at all times when children are present at the facility, or when children are offsite of the facility for facility activities. Nothing in this subdivision shall be construed to require, in the event of an emergency, additional staff members, who are available when children are present at the facility, to have a current certificate in pediatric first aid and pediatric cardiopulmonary resuscitation.

(c) All personnel and licensees described in subdivision (a) shall complete 15 hours of preventive health practices training as described in subdivision (a) on or before January 1, 1995, and completion of the health training shall be a condition of licensure.

(1) The department shall issue a provisional license for otherwise qualified applicants who are not in compliance with this section. This provisional license shall expire 90 days after the date of issuance and shall not be extended.

(2) A notice of deficiency shall be issued by the department at the time of a site visit to any licensee who is not in compliance with this section. The licensee shall, at the time the notice is issued, develop a plan of correction to correct the deficiency within 90 days of receiving the notice. The facility's license may be revoked if it fails to correct the deficiency within the 90-day period. Section 1596.890 shall not apply to this paragraph.

(d) Completion of the training required pursuant to subdivisions (a) and (b) shall be demonstrated, upon request of the licensing agency, by the following:

(1) A current pediatric cardiopulmonary resuscitation card issued either by the American Red Cross or the American Heart Association, or by a training program that has been approved by the Emergency Medical Services Authority pursuant to Section 1797.191.

(2) A current pediatric first aid card issued either by the American Red Cross or by a training program that has been approved by the Emergency Medical Services Authority pursuant to Section 1797.191.

(3) A certificate of completion of a course or courses in preventive health practices as defined in subdivision (a) or certified copies of transcripts that identify the number of hours and the specific course or courses taken for training in preventative health practices as defined in subdivision (a).

(e) The training required under subdivision (a) shall not be provided by a home study course. This training may be provided through on-the-job training, workshops, or classes.

(f) All personnel and licensees described in subdivision (a) shall maintain a current, unexpired pediatric cardiopulmonary resuscitation card and a pediatric first aid card in accordance with

subdivision (d).

(g) The department shall have the authority to grant exceptions to the requirements imposed by this section in order to meet the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

(h) The department shall adopt regulations to implement this section.

SEC. 2. Section 1797.113 is added to the Health and Safety Code, to read:

1797.113. The Emergency Medical Services Training Program Approval Fund is hereby established in the State Treasury and, notwithstanding Section 13340 of the Government Code, is continuously appropriated to the authority for the authority's training program review and approval activities. The fees charged by the authority under subdivision (b) of Section 1797.191 shall be deposited in this fund. The authority may transfer unexpended and unencumbered moneys contained in the Emergency Medical Services Training Program Approval Fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest, dividends, and pecuniary gains from such investments or deposits shall accrue to the Emergency Medical Services Training Program Approval Fund.

SEC. 3. Section 1797.191 is added to the Health and Safety Code, to read:

1797.191. (a) The authority shall establish minimum standards for the training in pediatric first aid and pediatric cardiopulmonary resuscitation (CPR) that is required by Section 1596.866.

(b) The authority shall establish a process for the ongoing review and approval of training programs in pediatric first aid and CPR to ensure that those programs meet the minimum standards established pursuant to subdivision (a). The authority shall charge fees equal to its costs incurred for the pediatric first aid and CPR training standards program and for the ongoing review and approval of these programs.

(c) In order to ensure that adequate qualified training programs are available to provide training in pediatric first aid and pediatric CPR to all persons who are required to have that training by January 1, 1995, the authority may, after approval of the commission pursuant to Section 1799.50, establish temporary standards for training programs for use until permanent standards can be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) Persons who, prior to July 1, 1994, have completed a course in pediatric first aid or pediatric CPR, and have a current certificate or course completion card, shall be deemed to have met the requirement for training in that subject if the course they took meets the requirements established by the authority pursuant to this section and that course is either subsequently approved by the

authority or was provided by either the American Red Cross or the American Heart Association as permitted by paragraphs (1) and (2) of subdivision (d) of Section 1596.866.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to meet the requirement of existing law that all child day care facility personnel be trained in CPR and first aid by January 1, 1995, standards must first be developed to ensure that the training received meets certain uniform health and safety standards in accordance with the mechanisms provided for by this act. In order for the standards to be developed and the training to be provided by January 1, 1995, it is necessary that this act must take effect immediately.

CHAPTER 247

An act to add Section 40730 to the Health and Safety Code, relating to air pollution.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 40730 is added to the Health and Safety Code, to read:

40730. (a) A district may establish programs to assist the public, government agencies, and businesses in complying with district regulations.

(b) For the purposes of a program established pursuant to subdivision (a), a district may provide to any person any factual nonconfidential information regarding any product or service that is in compliance with district regulations, and regarding the air emissions associated with a particular use of that product or service. The provision of that information, upon request or otherwise, shall not include any recommendation to any person with respect to any product or service.

CHAPTER 248

An act to amend Section 4336 of the Fish and Game Code, relating to game.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 4336 of the Fish and Game Code is amended to read:

4336. The holder of a deer license tag shall carry the tag while hunting deer, and upon the killing of any deer, shall immediately fill out both parts of the tag and permanently mark the date of the kill. One part of the deer license tag shall be immediately attached to the antlers of antlered deer or to the ear of any other deer and kept attached during the open season and for 15 days thereafter. The other part of the tag shall be sent to the department.

Except as otherwise provided, possession of any untagged deer shall be a violation of this section.

CHAPTER 249

An act to amend Section 18931 of the Health and Safety Code, relating to building standards.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 18931 of the Health and Safety Code is amended to read:

18931. The commission shall perform the following:

(a) In accordance with Section 18930 and within 120 days from the date of receipt of adopted standards, review the standards of adopting agencies and approve, return for amendment with recommended changes, or reject building standards submitted to the commission for its approval. When building standards are returned for amendment or rejected, the commission shall inform the adopting agency or state agency that proposes the building standards of the specific reasons for the recommended changes or rejection, citing the criteria required under Section 18930. When standards are not acted upon by the commission within 120 days, the standards shall be approved, including codification and publication in the California Building Standards Code, without further review and without return or rejection by the commission.

(b) Codify, including publish, all building standards of adopting agencies or state agencies that propose the building standards and statutes defining building standards into one California Building Standards Code.

(c) Resolve conflict, duplication, and overlap in building standards in the code.

(d) Ensure consistency in nomenclature and format in the code.

(e) In accordance with Section 18945, hear appeals resulting from the administration of state building standards.

(f) Adopt any procedural regulations which it deems necessary to administer this part.

(g) The commission shall direct the executive director to prepare a comprehensive listing of all state amendments developed for publication in the California State Building Code (Part 2 (commencing with Section 101), Title 24, California Code of Regulations), referencing the 1994 Edition of the Uniform Building Code, as published by the International Conference of Building Officials, for the period beginning January 1, 1995, through December 31, 1995. The listing shall identify the following:

(1) Each new state amendment to the 1994 Edition of the Uniform Building Code, as published by the International Conference of Building Officials, and the state agency that adopted the new amendment.

(2) (A) The analysis justifying the adoption or proposal of the amendment identified in paragraph (1), submitted pursuant to paragraph (2) of subdivision (a) of Section 18930.

(B) The analysis justifying the adoption or proposal of the amendment identified in paragraph (1), submitted pursuant to paragraph (3) of Section 18930.

(C) The analysis justifying the adoption or proposal of the amendment identified in paragraph (1), submitted pursuant to paragraph (5) of Section 18930.

(D) The analysis justifying the adoption or proposal of the amendment identified in paragraph (1), submitted pursuant to paragraph (7), or to subparagraph (A) or (B) of paragraph (7) of subdivision (a) of Section 18930.

(3) Existing state amendments, published in earlier editions of the California State Building Code (Part 2 (commencing with Section 101), Title 24, California Code of Regulations), which are published in the California State Building Code referencing the 1994 Edition of the Uniform Building Code, as published by the International Conference of Building Officials.

(4) The California Building Standards Commission's determination as to whether the amendment referred to in paragraph (3) continues to be justified under the criteria set forth in Section 18930. The commission shall use information gathered in the study required by Chapter 1289 of the Statutes of 1990 in making its determination, and may also request information from the state agency that adopted or proposed the amendments.

The commission shall perform this task to the extent feasible, and within the existing budget constraints during the triennial adoption process of the California Building Standards Code, referencing the 1994 Edition of the Uniform Building Code as published by the International Conference of Building Officials. The commission shall be authorized to reduce the scope of the review should fiscal restraints warrant this action. In the event a reduction in the scope of the review is made, the commission shall give priority to those sections of the California State Building Code (Part 2 (commencing with Section 101), Title 24, California Code of Regulations) that directly affect residential construction.

(5) Upon completion of the comprehensive listing required by this subdivision, the commission shall inform the public and all state agencies with the authority to develop building standards that the listing has been completed, and that copies will be made available upon request.

CHAPTER 250

An act to add Section 6525 to the Government Code, relating to water.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 6525 is added to the Government Code, to read:

6525. Notwithstanding any other provision of this chapter, a mutual water company may enter into a joint powers agreement with any public agency for the purpose of jointly exercising any power common to the contracting parties.

CHAPTER 251

An act to amend Sections 4010, 4018, 4022, 4023, 4023.1, 4023.2, and 4030 of the Health and Safety Code, relating to drinking water.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 4010 of the Health and Safety Code is amended to read:

4010. The Legislature finds and declares all of the following:

(a) Every citizen of California has the right to pure and safe drinking water.

(b) Feasible and affordable technologies are available and shall be used to remove toxic contaminants from public water supplies.

(c) According to the State Department of Health Services, over 95 percent of all large public water systems in California are in compliance with health-based action levels established by the state department for various contaminants.

(d) It is the policy of the state to reduce to the lowest level feasible all concentrations of toxic chemicals that when present in drinking water may cause cancer, birth defects, and other chronic diseases.

(e) This chapter is intended to ensure that the water delivered by public water systems of this state shall at all times be pure, wholesome, and potable. The provisions of this chapter provide the means to accomplish this objective.

(f) It is the intent of the Legislature to improve laws governing drinking water quality to improve upon the minimum requirements of the federal Safe Drinking Water Act Amendments of 1986, to establish primary drinking water standards that are at least as stringent as those established under the federal Safe Drinking Water Act, and to establish a program under this chapter that is more protective of public health than the minimum federal requirements.

(g) It is the further intent of the Legislature to establish a drinking water regulatory program within the State Department of Health Services in order to provide for the orderly and efficient delivery of safe drinking water within the state and to give the establishment of drinking water standards and recommended public health goals greater emphasis and visibility within the state department.

SEC. 2. Section 4018 of the Health and Safety Code is amended to read:

4018. (a) The department shall develop and publish a list of all existing or proposed maximum contaminant levels that are set at a level substantially less stringent, as determined by the department, than their corresponding recommended public health goals due to limitations of technology or excessive costs.

(b) Public water systems that serve more than 10,000 service connections and that exceed, for organic contaminants on a running quarterly average basis, or for inorganic contaminants on a basis established by the department, a recommended public health goal listed by the department pursuant to subdivision (a), shall do the following:

(1) The water system shall evaluate in writing all reasonable means of reducing the level of the contaminant to as close to the recommended public health goal as feasible, and submit the written evaluation to the department at least once annually.

(2) After the written evaluation has been submitted and upon being notified by the department of the need to do so, the water system shall submit a water quality improvement plan to the department, based upon the evaluation. The water quality

improvement plan shall identify all reasonable measures available to the water system to reduce the level of the contaminant, the costs to consumers and the water system of implementing the measures, and a proposed schedule of actions to be undertaken by the water system to reduce the level of the contaminant. If the water system determines that it is unable to reduce the level of the contaminant due to technical or economic limitations, the basis for that determination shall be described in the plan.

(c) The department shall review the water quality improvement plan and may approve it as submitted or may require additional information from the water system. Upon approval of the plan, the department shall amend or revise the domestic water supply permit issued to the water system pursuant to this chapter to include a time schedule for implementation of those measures which are technically and economically feasible.

SEC. 3. Section 4022 of the Health and Safety Code is amended to read:

4022. (a) On or before July 1, 1991, the department shall submit to the Legislature a comprehensive Safe Drinking Water Plan for California.

(b) The Safe Drinking Water Plan shall include, but not be limited to, the following information:

(1) An analysis of the overall quality of California's drinking water and the identification of specific water quality problems.

(2) Types and levels of contaminants found in public drinking water systems that have less than 10,000 service connections. The discussion of these water systems shall include the following:

(A) Estimated costs of requiring these systems to meet primary drinking water standards and recommended public health goals.

(B) Recommendations for actions that could be taken by the Legislature, the department, and these systems to improve water quality.

(3) A discussion and analysis of the known and potential health risks that may be associated with drinking water contamination in California.

(4) An evaluation of how existing water quality information systems currently maintained by local or state agencies can be more effectively used to protect drinking water.

(5) An evaluation of the research needed to develop inexpensive methods and instruments to ensure better screening and detection of water borne chemicals, and inexpensive detection methods that could be used by small utilities and consumers to detect harmful microbial agents in drinking water.

(6) An analysis of the technical and economic viability and the health benefits of various treatment techniques that can be used to reduce levels of trihalomethanes, lead, nitrates, synthetic organic chemicals, micro-organisms, and other contaminants in drinking water.

(7) A discussion of alternative methods of financing the

construction, installation, and operation of new treatment technologies, including, but not limited to user charges, state or local taxes, state planning and construction grants, loans, and loan guarantees.

(8) A discussion of sources of revenue presently available, and projected to be available, to public water systems to meet current and future expenses.

(9) An analysis of the current cost of drinking water paid by residential, business, and industrial consumers based on a statewide survey of large, medium, and small public water systems.

(10) Specific recommendations, including recommendations developed pursuant to paragraph (6), to improve the quality of drinking water in California and a detailed five-year implementation program.

SEC. 4. Section 4023 of the Health and Safety Code is amended to read:

4023. The Office of Environmental Health Hazard Assessment shall establish recommended public health goals for contaminants in drinking water in accordance with all of the following criteria:

(a) Recommended public health goals, including those implementing the criteria set forth in subdivisions (b) to (h), inclusive, shall be set at a level that does not exceed the national primary drinking water standard adopted by the United States Environmental Protection Agency.

(b) Any recommended public health goals for an acutely toxic substance shall be set at a level at which scientific evidence indicates that no known or anticipated adverse effects on health will occur, plus an adequate margin of safety.

(c) Any recommended public health goal established for a carcinogen or other substance which may cause chronic disease shall be based solely on health effects without regard to cost impacts or other factors, and shall be set at a level which the office has determined, based upon currently available data, does not pose any significant risk to health.

(d) To the extent the information is available, the office shall consider possible synergistic effects resulting from exposure to, or interaction by, two or more contaminants.

(e) The office shall consider the existence of groups or individuals in the population that are more susceptible to adverse effects of contaminants than a normal healthy adult.

(f) The office shall consider the contaminant exposure and body burden levels that alter physiological function or structure in a manner that may significantly increase the risk of illness.

(g) In cases of scientific ambiguity, the office shall use criteria most protective of public health and shall incorporate safety factors of noncarcinogenic substances for which generally accepted scientific research indicates there is a safe dose-response threshold.

(h) The office shall consider exposure to contaminants in media other than drinking water, including, but not limited to, exposures

in food, in the ambient and indoor air, and the resulting body burden.

(i) Recommended public health goals established by the office shall be reviewed periodically and revised as necessary based upon the availability of new scientific data.

SEC. 5. Section 4023.1 of the Health and Safety Code is amended to read:

4023.1. (a) In addition to, and concurrent with, adoption of recommended public health goals established by the office pursuant to Section 4023, the department shall adopt primary drinking water standards for contaminants found in drinking water in accordance with the following criteria:

(1) Primary drinking water standards shall be set at a level that is as close as practical to recommended public health goals placing primary emphasis on protection of public health.

(2) Primary drinking water standards shall be set using considerations of technical feasibility and economic costs of compliance to water purveyors and consumers.

(3) In no event shall primary drinking water standards be set at levels less stringent than primary drinking water standards set by the United States Environmental Protection Agency.

(b) At least once every five years after adoption, the department shall review primary drinking water standards, and, using the criteria set forth in subdivision (a), shall amend any standard if any of the following occur:

(1) Changes in technology or treatment techniques permit greater protection of public health or attainment of the recommended public health goal.

(2) New scientific evidence indicates that a substance may present a substantially different risk to public health than was previously determined.

(3) The department determines that a primary standard no longer meets the requirements of this chapter.

(c) The department may, by regulation, require the use of a specified treatment technique in lieu of establishing a maximum contaminant level for a contaminant if the department determines that it is not economically or technologically feasible to ascertain the level of the contaminant.

SEC. 6. Section 4023.2 of the Health and Safety Code is amended to read:

4023.2. On or before January 1, 1992, the department shall propose, hold a public hearing, and promulgate a finding of the best available technology for each contaminant for which a recommended public health goal and a primary drinking water standard have been adopted. Thereafter, the department shall promulgate a finding of best available technology for each contaminant for which a recommended public health goal and a primary drinking water standard have been adopted at the time the levels and standards are adopted. The finding of the department shall take into consideration the costs and benefits of best available

treatment technology that have been proven effective under full-scale field applications.

SEC. 7. Section 4030 of the Health and Safety Code is amended to read:

4030. The department shall require every public water system, as a condition of operation, to report at least once annually to water consumers on the level of contaminants in drinking water which pose a potential risk to human health. The report shall include, but not be limited to, information on source, content, and quality of water purveyed, a comparison between levels of contaminants and recommended public health goals; and information on compliance with primary drinking water standards.

CHAPTER 252

An act to amend Section 1596.8716 of the Health and Safety Code, relating to child day care.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 1596.8716 of the Health and Safety Code is amended to read:

1596.8716. (a) For licensing purposes, employees of a child care and development program operated by a school district, county office of education, or community college under contract with the State Department of Education pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code who have received a physical examination as a condition of employment with the district or office are not required to have a health screening as required by Section 101216 of Title 22 of the California Code of Regulations.

(b) For licensing purposes, a school principal of a public school that operates a child care and development program under contract with the State Department of Education pursuant to Article 7 (commencing with Section 8235) of Chapter 2 of Part 6 of the Education Code shall be deemed qualified to be a day care center director pursuant to Section 101315 of Title 22 of the California Code of Regulations only when the program is located on the campus of an operating public school, with staff who are employees of the public school.

CHAPTER 253

An act to amend Sections 14601, 14601.1, and 14601.2 of the Vehicle Code, relating to vehicles.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 14601 of the Vehicle Code is amended to read:

14601. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for reckless driving in violation of Section 23103 or 23104, any reason listed in subdivision (a) or (c) of Section 12806 authorizing the department to refuse to issue a license, negligent or incompetent operation of a motor vehicle as prescribed in subdivision (e) of Section 12809, or negligent operation as prescribed in Section 12810, if the person so driving has knowledge of the suspension or revocation. Knowledge shall be presumed if notice has been given by the department to the person. The presumption established by this subdivision is a presumption affecting the burden of proof.

(b) Any person convicted under this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not less than five days or more than six months and by fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000).

(2) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601.1, 14601.2, or 14601.5, by imprisonment in the county jail for not less than 10 days or more than one year and by fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000).

(c) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601.1, 14601.2, or 14601.5 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(d) Nothing in this section prohibits a person from driving a motor vehicle, which is owned or utilized by the person's employer, during the course of employment on private property which is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (c) of Section 12500.

SEC. 2. Section 14601.1 of the Vehicle Code is amended to read:

14601.1. (a) No person shall drive a motor vehicle when his or her driving privilege is suspended or revoked for any reason other than those listed in Section 14601, 14601.2, or 14601.5, if the person so

driving has knowledge of the suspension or revocation. Knowledge shall be presumed if notice has been given by the department to the person. The presumption established by this subdivision is a presumption affecting the burden of proof.

(b) Any person convicted under this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not more than six months or by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(2) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601, 14601.2, or 14601.5, by imprisonment in the county jail for not less than five days or more than one year and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000).

(c) Nothing in this section prohibits a person from driving a motor vehicle, which is owned or utilized by the person's employer, during the course of employment on private property which is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (c) of Section 12500.

SEC. 3. Section 14601.2 of the Vehicle Code is amended to read:

14601.2. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for a conviction of a violation of Section 23152 or 23153, if the person so driving has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, no person shall drive a motor vehicle at any time when that person's driving privilege is restricted pursuant to Article 2 (commencing with Section 23152) of Chapter 12 of Division 11, if the person so driving has knowledge of the restriction.

(c) Knowledge of suspension or revocation of the driving privilege shall be presumed if notice has been given by the department to the person and knowledge of restriction of the driving privilege shall be presumed if notice has been given by the court to the person. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) Any person convicted of a violation of this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not less than 10 days or more than six months and by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), unless the person has been designated an habitual traffic offender under subdivision (b) of Section 23170 or subdivision (b) of Section 23175, in which case the person shall, in addition, be sentenced as provided in paragraph (3) of subdivision (e) of Section 14601.3.

(2) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section

14601 , 14601.1, or 14601.5, by imprisonment in the county jail for not less than 30 days or more than one year and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000), unless the person has been designated an habitual traffic offender under subdivision (b) of Section 23170 or subdivision (b) of Section 23175, in which case the person shall, in addition, be sentenced as provided in paragraph (3) of subdivision (e) of Section 14601.3.

(e) If any person is convicted of a first offense under this section and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(f) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601 , 14601.1, or 14601.5, and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 30 days.

(g) If any person is convicted of a second or subsequent offense which results in a conviction of this section within seven years, but over five years, of a prior offense which resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(h) Nothing in this section prohibits a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle, which is owned or utilized by the person's employer, during the course of employment on private property which is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (c) of Section 12500.

(i) Nothing in this section prohibits a person with a suspended license from driving a motor vehicle when emergency medical service is needed immediately.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 254

An act to amend Sections 100014, 100060, 100061, 100062, 100063, 100070, 100071, 100080, 100082, 100090, 100100, 100114, 100122, 100171, and 100500 of, to add Sections 100014.1, 100060.2, 100062.1, 100126, 100308, and 100309 to, to repeal Sections 100081, 100083, 100091, 100092, and 100093 of, and to repeal Article 4 (commencing with Section 100140), Article 7 (commencing with Section 100180), and Article 8 (commencing with Section 100200) of, Chapter 5 of Part 12 of Division 10 of, the Public Utilities Code, relating to transportation.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 100014 of the Public Utilities Code is amended to read:

100014. "Board of directors" and "board" means the board of directors of the district.

SEC. 2. Section 100014.1 is added to the Public Utilities Code, to read:

100014.1. "Director" means a member of the board of directors of the district.

SEC. 3. Section 100060 of the Public Utilities Code is amended to read:

100060. The government of the district shall be vested in a board of directors which shall consist of 12 members, as follows:

(1) Two representatives of the county and one alternate who shall be members of the board of supervisors of the county, appointed by the board of supervisors.

(2) Five representatives of the City of San Jose and one alternate who shall be city council members of the City of San Jose appointed by the city council.

(3) Five city council members selected from among the city councils of all of the cities in the county, other than the City of San Jose, as provided by joint powers agreements among those cities. The joint powers agreements may provide for the appointment of alternates, who shall be city council members, for those city representatives.

(b) An alternate may vote in the place of a director represented by that alternate if the director is absent.

(c) To the extent possible, the appointing powers shall appoint individuals who have expertise, experience, or knowledge relative to transportation issues.

SEC. 4. Section 100060.2 is added to the Public Utilities Code, to read:

100060.2. Except as otherwise provided, the term of office for each director shall be two years and until the appointment and

qualification of his or her successor. A successor shall be appointed not later than 30 days immediately upon the expiration of a director's term. The first directors shall include those who are members of the board of directors of the Santa Clara County Congestion Management Agency as of January 1, 1995, and their terms shall be equal to the time that would otherwise be remaining in their congestion management agency offices. A vacancy exists whenever a director ceases to hold office on the city council or board of supervisors from which be or she was appointed. Any vacancy shall, within 60 days of its occurrence, be filled for the balance of the term by the body which made the original appointment.

SEC. 5. Section 100061 of the Public Utilities Code is amended to read:

100061. The board of directors, annually, at the first meeting in January, shall elect a chairperson who shall preside at all meetings. The board of directors shall also, at that meeting, elect a vice chairperson, who, in the event of the chairperson's absence or inability to act, shall act as chairperson, and while so acting, shall have all of the authority of the chairperson.

SEC. 6. Section 100062 of the Public Utilities Code is amended to read:

100062. The board shall establish rules for its proceedings. A majority of the members of the board shall constitute a quorum for the transaction of business and no act of the board shall be valid unless at least seven concur therein. The acts of the board shall be expressed by motion, resolution, or ordinance. All meetings of the board shall be conducted in the manner prescribed by the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950), Part 1, Division 2, Title 5 of the Government Code.

SEC. 7. Section 100062.1 is added to the Public Utilities Code, to read:

100062.1. (a) No ordinance, except an urgency ordinance, shall be passed by the board on the day of its introduction, nor within three days thereafter, nor at any time other than at a regular or adjourned regular meeting. The enacting clause of all ordinances shall be as follows:

"The Board of Directors of the Santa Clara County Transit District ordains as follows:"

(b) All ordinances shall be signed by the chairperson of the board or the vice chairperson and attested by the secretary. Before the expiration of 15 days after the passage of an ordinance, it shall be published once in a newspaper of general circulation in the district as provided by law for ordinances adopted by counties. An order entered in the minutes of the board that the ordinance has been duly published is prima facie proof of publication.

(c) Urgency ordinances shall be adopted in the same manner as provided by law for the adoption of urgency ordinances by counties.

SEC. 8. Section 100063 of the Public Utilities Code is amended to read:

100063. The board may fix the amount of compensation to be paid each member of the board for services and for each meeting attended by the member. The compensation shall not exceed one hundred dollars ($100) for each meeting of the board attended by the member or for each day's service rendered as a member by request of the board, not exceeding a total of six days in any calendar month, together with any expenses incident thereto.

SEC. 9. Section 100070 of the Public Utilities Code is amended to read:

100070. The board of directors is the legislative body of the district and shall determine all questions of district policy.

SEC. 10. Section 100071 of the Public Utilities Code is amended to read:

100071. It shall be the duty of the board of directors and it shall have the power to:

(a) Determine the transit facilities to be acquired and constructed by the district, the manner of operation, and the means to finance them.

(b) Adopt an annual budget for the district and fix the compensation of its officers and employees.

(c) Fix rates, rentals, charges and classifications of transit service operated by the district.

(d) Adopt an administrative code, by ordinance, which shall prescribe the powers and duties of district officers and the method of appointment of district employees and methods, procedures and systems of operation and management of the district.

(e) Adopt by ordinance, rules and regulations governing the use of transit facilities owned or operated by the district.

(f) Cause a postaudit of the financial transactions and records of the district to be made at least annually by a certified public accountant or public accountant.

(g) Adopt reasonable rules and regulations providing for the administration of employer-employee relations.

(h) Do any and all things necessary to carry out the purposes of this part.

SEC. 11. Section 100080 of the Public Utilities Code is amended to read:

100080. The board of directors shall establish at least one advisory committee.

SEC. 12. Section 100081 of the Public Utilities Code is repealed.

SEC. 13. Section 100082 of the Public Utilities Code is amended to read:

100082. The advisory committees shall provide advice to the board of directors on matters of district policy and shall have additional duties as provided by the board of directors.

SEC. 14. Section 100083 of the Public Utilities Code is repealed.

SEC. 15. Section 100090 of the Public Utilities Code is amended to read:

100090. The officers of the district shall consist of the members of

the board of directors, the chairperson and vice chairperson of the board, a secretary, a general manager, a legal counsel, a controller, a treasurer, and such other officers, assistants and deputies as the board may deem necessary and provide for by ordinance.

SEC. 16. Section 100091 of the Public Utilities Code is repealed.

SEC. 17. Section 100092 of the Public Utilities Code is repealed.

SEC. 18. Section 100093 of the Public Utilities Code is repealed.

SEC. 19. Section 100100 of the Public Utilities Code is amended to read:

100100. The power and duties of the general manager are:

(a) To head the administrative branch of the district and to be responsible to the board of directors for the proper administration of all affairs of the district.

(b) To appoint, supervise, suspend or remove, district officers other than the members of the board and officers appointed by the board.

(c) To supervise and direct the preparation of the annual budget for the board and be responsible for its administration after its adoption.

(d) To formulate and present to the board plans for transit facilities within the district and the means to finance them.

(e) To supervise the planning, acquisition, construction, maintenance and operation of the transit facilities of the district.

(f) To attend all meetings of the board.

(g) To prepare and submit to the board as soon as practicable after the end of each fiscal year a complete report of the finances and administrative activities of the district for the preceding year.

(h) To perform such other and additional duties as the board may require.

SEC. 20. Section 100114 of the Public Utilities Code is amended to read:

100114. Except as otherwise provided in this part, district elections shall be called, held, and conducted as provided by the Uniform District Election Law.

SEC. 21. Section 100122 of the Public Utilities Code is amended to read:

100122. The purchase of all supplies, equipment, materials, and services shall be subject to the same limitations as are applicable to the County of Santa Clara.

SEC. 22. Section 100126 is added to the Public Utilities Code, to read:

100126. The district, which was established with the approval of the voters in 1972, shall continue as an entity under the control of its governing board as reorganized pursuant to the amendments to this part by statutes that were enacted in 1994. Nothing in the act that added this section during the second year of the 1993–94 Regular Session shall be construed to alter, impair, or terminate existing contracts between the district and other parties, including, but not limited to, funding agreements, grants, labor agreements,

agreements entered into pursuant to Section 13(c) of the Federal Transit Act and its antecedents, bonds, notes, equipment trust certificates, or other obligations of the district. All rights and powers of the district shall continue in full force and effect and no affirmation, adoption, or assumption by the board of directors is required for that continuation. The district shall become the successor to certain county contracts as provided by agreement between the county and the district.

SEC. 23. Article 4 (commencing with Section 100140) of Chapter 5 of Part 12 of Division 10 of the Public Utilities Code is repealed.

SEC. 24. Section 100171 of the Public Utilities Code is amended to read:

100171. The district may obtain temporary transfers of funds in accordance with the last paragraph of Section 6 of Article XVI of the California Constitution.

SEC. 25. Article 7 (commencing with Section 100180) of Chapter 5 of Part 12 of Division 10 of the Public Utilities Code is repealed.

SEC. 26. Article 8 (commencing with Section 100200) of Chapter 5 of Part 12 of Division 10 of the Public Utilities Code is repealed.

SEC. 27. Section 100308 is added to the Public Utilities Code, to read:

100308. County employees and employees of the Santa Clara County Congestion Management Agency who, on a date or dates determined by the board of directors, terminate their employment and immediately thereafter become employees of the district, shall transfer to the district, and the district shall assume liability for, all of their accrued and unused vacation, sick leave, personal leave, compensating time off and STO balances and days of accrued service in accordance with the records of their former employer in lieu of any payment by the former employer for those balances. Those employees who were covered by a county or congestion management agency pension plan shall be entitled to the same or equivalent rights, options, privileges, benefits, obligations, accrued service, and status under the pension plan of the district.

SEC. 28. Section 100309 is added to the Public Utilities Code, to read:

100309. To the extent permitted by law, and until altered or revoked as provided by law, the district shall grant recognition to those employee organizations which served as the recognized representatives of the former county employees described in Section 100308 immediately prior to their employment by the district.

The district shall assume and observe all applicable provisions, including wages, of existing written memoranda of understanding in effect between the county and the above recognized labor organizations for those former county employees described in Section 100308 who are employed by the district in positions which would have been covered by those memoranda if the employees had remained employed by the county. This obligation extends only for the remainder of the term of the respective existing written

memoranda of understanding and to the extent not superseded by a successor agreement between the district and a recognized labor organization.

SEC. 29. Section 100500 of the Public Utilities Code is amended to read:

100500. The district may be dissolved pursuant to the Cortese-Knox Local Government Reorganization Act of 1985.

SEC. 30. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 31. Sections 3 and 4 of this act shall not become operative until each house of the Legislature is notified by the Santa Clara County Transit District that an audit of the financial condition of the district has been performed by a certified public accountant.

CHAPTER 255

An act to add Section 1294.1 to the Education Code, relating to employees.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 1294.1 is added to the Education Code, to read:

1294.1. (a) Notwithstanding any other provision of this code, a county superintendent of schools may employ substitute or temporary employees in a position requiring certification requirements to serve for periods of less than one year to provide instructional and related educational services in county community schools operated pursuant to Chapter 6.5 (commencing with Section 1980) of Part 2 and juvenile court schools operated pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27 if a temporary increase in enrollment exists.

(b) The number of employees hired under this section shall not exceed the number necessary to accommodate the temporary increase in enrollment and shall not increase established class size or pupil-to-teacher ratios, or both.

(c) If a substitute or temporary employee serves more than 60 schooldays, the employee is deemed to have been hired as a substitute or temporary employee for the duration of the semester

in which the employee renders the substitute or temporary service.

(d) Notwithstanding Sections 44917 and 44920, it is not required that substitute or temporary employees employed under this section replace regularly employed persons absent from service.

(e) For purposes of this section, a temporary increase in enrollment exists when the number of pupils enrolled is more than the average enrollment of the preceding two fiscal years prior to the year in which the substitute or temporary employee was hired under this section.

CHAPTER 256

An act to amend Section 15200.97 of the Welfare and Institutions Code, relating to support enforcement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 15200.97 of the Welfare and Institutions Code is amended to read:

15200.97. (a) Any funds paid to a county pursuant to this chapter which exceed the county's cost of administering the child support program of the district attorney pursuant to Section 11475.1 (hereafter called excess funds) shall be expended by the county only upon that program. All these excess funds shall be deposited by the county into a special fund established by the county for this purpose. Funds to be deposited shall include, but not be limited to, excess incentive funds paid pursuant to Sections 15200.1, 15200.2, 15200.3, 15200.6, 15200.7, 15200.8, 15200.85, and 15200.9, and all interest earned on deposits in the special fund.

(b) (1) By March 1, 1993, the department shall provide the appropriate policy and fiscal committees of the Legislature with information on the amount of excess funds, if any, accumulated by each county.

(2) Commencing July 1, 1993, all excess funds shall be expended by the county on the support enforcement program of the district attorney within two fiscal years following the fiscal year of receipt of the funds by the county. Except as provided in subdivision (c), any excess funds paid pursuant to this chapter since July 1, 1992, that the department determines have not been spent within the required two-year period shall revert to the General Fund, and shall be distributed by the department only to counties that have complied with this section. The formula for distribution shall be based on the number of AFDC-FG cases within each county.

(3) Not later than June 30, 1994, each county shall expend on the

support enforcement program any excess funds accrued from July 1, 1989, to June 30, 1992, inclusive, that have not been expended on the support enforcement program. The funds expended shall be in an amount that is greater than the county's 1991–92 expenditures for the program.

(c) A county that submits to the department a written plan approved by that county's district attorney for the expenditure of excess funds shall be exempted from the requirements of subdivision (b), if the department determines that the expenditure will be cost-effective and the expenditure plan will require more than the time provided for in subdivision (b) to expend or encumber the funds, or both. Once the department approves a plan pursuant to this subdivision, funds received by a county and designated for an expenditure in the plan shall not be expended by the county for any other purpose without the prior approval of the department.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that optimal use is made of county funds that would otherwise be required to be expended by June 30, 1994, it is necessary that this act go into immediate effect.

CHAPTER 257

An act to amend Sections 49110 and 49130 of the Education Code, relating to pupils.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 49110 of the Education Code is amended to read:

49110. It is the intent of the Legislature that school district personnel responsible for issuing work permits to minors have a working knowledge of California labor laws as they relate to minors; and further, that personnel be trained to provide the pupils practical personal guidance in career education. The superintendent of any school district in which any minor resides, a person holding a services credential with a specialization in pupil personnel services authorized by the superintendent in writing, or a certificated work experience education teacher or coordinator authorized by the superintendent in writing, may issue to certain minors permits to work. If the minor resides in a portion of a county not under the jurisdiction of the superintendent of any school district, the permit to work shall be issued by the superintendent of schools of the

county, by a person holding a services credential with a specialization in pupil personnel services authorized by the superintendent in writing, or a certificated work experience education teacher or coordinator authorized by the superintendent in writing. No permit to work shall be issued until the written request therefor from the parent, guardian, foster parent, or residential shelter services provider, has been filed with the issuing authority. "Residential shelter services" refers to residential and other support services provided to minors by a governmental agency, a person or agency under contract with a governmental agency to provide these services, an agency receiving funding from community funds, or a licensed community care facility or crisis resolution center on a temporary or emergency basis in a facility that services only minors.

In the event that the certificated person designated by the superintendent to issue work permits is not available, and delay in issuing a permit would jeopardize the ability of a pupil to secure work, a person authorized by the superintendent may issue the work permit.

In the event that a district does not employ or contract with a person holding a services credential with a specialization in pupil personnel services or with a certificated work experience education teacher or coordinator, the superintendent may authorize, in writing, a person who does not hold that credential to issue permits to work during periods of time in which the superintendent is absent from the district.

SEC. 2. Section 49130 of the Education Code is amended to read:

49130. A permit to work full time may be issued to a minor under the age of 16 years and over the age of 14 years who holds a diploma of graduation from the prescribed elementary school course under both of the following circumstances:

(a) The permit expires not later than the end of the current school year.

(b) Any of the following conditions:

(1) The parent or guardian of the minor child presents a sworn statement that the parent or guardian of the minor is incapacitated for labor through illness or injury, or that through the death or desertion of the father or mother of the minor, the family is in need of the earnings of the minor and that sufficient aid cannot be secured in any other manner.

(2) The minor is unable to reside with his or her family and the earnings of the minor are necessary for the support of the minor.

(3) The minor is residing with a foster care provider, or guardian receiving foster care funds for the minor, if the provider or guardian obtains written authorization from the minor's social worker, probation officer, or child protective services worker acting as an officer of the court. A permit may be issued to a minor who is subject to this paragraph only if the child's case plan documents that the purpose of the employment is to further the goal of emancipation pursuant to Part 6 (commencing with Section 7000) of Division 11 of

the Family Code, or to enable the minor to gain knowledge of necessary work skills and work habits, and of the responsibilities related to maintaining employment.

The person issuing the permit shall sign a statement that he or she, or a competent person designated by him or her, has investigated the conditions under which the application for the permit has been made and has found that, in his or her judgment, the earnings of the minor are necessary for the family to support the minor or that the earnings of the minor are necessary to support the minor and that sufficient aid cannot be secured in any other manner. Before issuing a work permit to a minor who is subject to paragraph (3) of subdivision (b), the person issuing the permit shall sign a statement that he or she has received authorization from the minor's social worker, probation officer, or child protective services worker.

A minor who applies for a work permit pursuant to this section shall be duly enrolled in a work experience education program.

CHAPTER 258

An act to amend Section 5536 of, and to add Section 5586 to, the Business and Professions Code, relating to architects.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 5536 of the Business and Professions Code is amended to read:

5536. (a) It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one year, or by both fine and imprisonment, for any person who is not licensed to practice architecture under this chapter, to practice architecture in this state or to use any term confusingly similar to the word architect, or to use the stamp of a licensed architect, as provided in Section 5536.1, or to advertise or put out any sign or card or other device which might indicate to the public that he or she is an architect or that he or she is qualified to engage in the practice of architecture or is an architectural designer.

(b) It is a misdemeanor, punishable as specified in subdivision (a), for any person not registered or licensed by the state to prepare plans, specifications, and instruments of service for others to affix a stamp or seal which bears the legend "State of California" or words or symbols that represent or imply that he or she is so registered or licensed by the state to prepare plans, specifications, or instruments of service for the construction, alteration, improvement, or repair of buildings or structures that are submitted to a state or local

governmental entity for approval or the issuance of a permit.

(c) It is a misdemeanor, punishable as specified in subdivision (a), for any person to advertise or represent that he or she is a "registered building designer" or is registered or otherwise licensed by the state as a building designer.

SEC. 2. Section 5586 is added to the Business and Professions Code, to read:

5586. The fact that the holder of a license has had disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties as an architect constitutes a ground for disciplinary action.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 259

An act to amend Section 50517.5 of the Health and Safety Code, relating to housing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 50517.5 of the Health and Safety Code is amended to read:

50517.5. (a) (1) The department shall establish a Farmworker Housing Grant Program under which, subject to the availability of funds therefor, grants shall be made to local public entities and nonprofit corporations for the construction or rehabilitation of housing for agricultural employees and their families. Under this program, grants may also be made for the purchase of land in connection with housing assisted pursuant to this section and for the construction and rehabilitation of related support facilities necessary to the housing. In its administration of this program, the department shall disburse grant funds to the local public entities and nonprofit corporations or may, at the request of the local public entity or nonprofit corporation which sponsors and supervises the rehabilitation program, disburse grant funds to agricultural

employees who are participants in a rehabilitation program sponsored and supervised by the local public entity or nonprofit corporation. No part of a grant made pursuant to this section may be used for project organization or planning.

(2) The program shall be administered by the Director of Housing and Community Development and officers and employees of the department as he or she may designate.

(3) It is the intent of the Legislature that, in administering the program, the director shall facilitate, to the greatest extent possible, the construction and rehabilitation of permanent dwellings for year-round occupancy and ownership by agricultural employees, including ownership of the sites upon which the dwellings are located.

(b) (1) The Farmworker Housing Grant Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated to the department for making grants pursuant to this section and for costs incurred by the department in administering the grant program.

(2) There shall be paid into the fund the following:

(A) Any moneys appropriated and made available by the Legislature for purposes of the fund.

(B) Any moneys which the department receives in repayment or return of grants from the fund, including any interest therefrom.

(C) Any other moneys which may be made available to the department for the purposes of this chapter from any other source or sources.

(c) Grants made pursuant to this section shall be matched by grantees with at least equal amounts of federal moneys, other cash investments, or in-kind contributions.

(d) With respect to the supervision of grantees, the department shall do the following:

(1) Establish minimum capital reserves to be maintained by grantees.

(2) Fix and alter from time to time a schedule of rents that may be necessary to provide residents of housing assisted pursuant to this section with affordable rents to the extent consistent with the maintenance of the financial integrity of the housing project. No grantee shall increase the rent on any unit constructed or rehabilitated with the assistance of funds granted pursuant to this section without the prior permission of the department, which shall be given only if the grantee affirmatively demonstrates that the increase is required to defray necessary operating costs or avoid jeopardizing the fiscal integrity of the housing project.

(3) Determine standards for, and control selection by grantees of, tenants and subsequent purchasers of housing constructed or rehabilitated with the assistance of funds granted pursuant to this section.

(4) (A) Require as a condition precedent to a grant of funds that

the grantee be record owner in fee of the assisted real property and that the grantee shall have entered into a written agreement with the department binding upon the grantee and successors in interest to the grantee. The agreement shall include the conditions under which the funds advanced may be repaid. The agreement shall include provisions for a lien on the assisted real property in favor of the State of California for the purpose of securing performance of the agreement. The agreement shall also provide that the lien shall endure until released by the Director of Housing and Community Development.

(B) In the event that funds granted pursuant to this section constitute less than 25 percent of the total development cost or value, whichever is applicable, of a project assisted under this section, the department may adopt, by regulation, criteria for determining the number of units in a project to which the restrictions on occupancy contained in the agreement apply. In no event may these regulations provide for the application of the agreement to a percentage of units in a project which is less than the percentage of total development costs which funds granted pursuant to this section represent.

(C) Contemporaneously with the disbursement of the initial funds to a grantee, the department shall cause to be recorded, in the office of the county recorder of the county in which the assisted real property is located, a notice of lien executed by the Director of Housing and Community Development. The notice of lien shall refer to the agreement required by this paragraph for which it secures and it shall include a legal description of the assisted real property which is subject to the lien. The notice of lien shall be indexed by the recorder in the Grantor Index to the name of the grantee and in the Grantee Index to the name of the State of California, Department of Housing and Community Development. The department shall adopt by regulation criteria for the determination of the lien period. This regulation shall take into account whether the property is held by multifamily rental, single-family ownership, or cooperative ownership and whether it is new construction or rehabilitative construction.

(D) Pursuant to regulations adopted by the department, the department may execute and cause to be recorded in the office of the recorder of the county in which a notice of lien has been recorded, a subordination of the lien. The regulations adopted by the department shall provide that any subordination of the lien shall not jeopardize the security interest of the state and shall further the interest of farmworker housing. The recitals contained in the subordination shall be conclusive in favor of any bona fide purchaser or lender relying thereon.

(5) Regulate the terms of occupancy agreements or resale controls, to be used in housing assisted pursuant to this section.

(6) Provide bilingual services and publications, or require grantees to do so, as necessary to implement the purposes of this section.

(7) The agreement between the department and the grantee shall provide, among other things, that both of the following occur:

(A) Upon the sale or conveyance of the real property, or any part thereof, for use other than for agricultural employee occupancy, the grantee or its successors shall, as a condition for the release of the lien provided pursuant to paragraph (4), repay to the fund the department's grant funds.

(B) Upon the sale or conveyance of the real property or any part thereof for continued agricultural employee occupancy, the transferee shall assume the obligation of the transferor and the real property shall be transferred to the new owner; provided that the transferee agrees to abide by the agreement entered into between the transferor and the department and that the new owner takes the property subject to the lien provided pursuant to paragraph (4), except that this lien shall, at the time of the transfer of the property to the new owner, be extended for an additional lien period determined by the department pursuant to paragraph (4), and the new owner shall not be credited with the lien period that had run from the time the transferor had acquired the property to the time of transfer to the new owner, unless the department determines that it is in the best interest of the state and consistent with the intent of this section to so credit the lien period to the new owner. However, the lien shall have priority as of the recording date of the lien for the original grantee, pursuant to paragraph (4).

(e) The department may do any of the following with respect to grantees:

(1) Through its agents or employees enter upon and inspect the lands, buildings, and equipment of a grantee, including books and records, at any time before, during, or after construction or rehabilitation of units assisted pursuant to this section. However, there shall be no entry or inspection of any unit which is occupied, whether or not any occupant is actually present, without the consent of the occupant.

(2) Supervise the operation and maintenance of any housing assisted pursuant to this section and order repairs as may be necessary to protect the public interest or the health, safety, or welfare of occupants of the housing.

(f) The department shall include in its annual report required by Section 50408, a current report of the Farmworker Housing Grant Program. The report shall include, but need not be limited to, (1) the number of households assisted, (2) the average income of households assisted and the distribution of annual incomes among assisted households, (3) the rents paid by households assisted, (4) the number and amount of grants made to each nonprofit corporation and local public entity in the preceding year, (5) the dollar value of funding derived from sources other than the state for each project receiving a grant under this section, and an identification of each source, (6) recommendations, as needed, to improve operations of the program and respecting the desirability of extending its

application to other groups in rural areas identified by the department as having special need for state housing assistance, and (7) the number of manufactured housing units assisted under this section.

(g) As used in this section:

(1) "Agricultural employee" has the same meaning as specified in subdivision (b) of Section 1140.4 of the Labor Code, but also includes any person who works at a packing shed for a labor contractor or other entity that contracts with an agricultural employer in order to perform services in connection with handling, drying, packing, or storing any agricultural commodity in its raw or natural state, whether or not this person is encompassed within the definition specified in subdivision (b) of Section 1140.4 of the Labor Code.

(2) "Grantee" means the local public entity or nonprofit corporation that is awarded the grant under this section and, at the request thereof, may include an individual homeowner receiving direct payment of a grant for rehabilitation under this section who occupies the assisted housing both before and after the rehabilitation and who is a participant in a rehabilitation program sponsored and supervised by a local public entity or nonprofit corporation.

(3) "Housing" may include, but need not be limited to, conventionally constructed units, and manufactured housing.

(h) The department may offer the assistance offered pursuant to this chapter in any area where there is a substantial unmet need for farmworker housing.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide immediate assistance for agricultural employees who are in dire need of housing, it is necessary that this act take effect immediately.

CHAPTER 260

An act to amend Sections 40101, 40158, 40374, 40701.5, and 41080 of, and to add Sections 40100.7 and 40152.5 to, the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 40100.7 is added to the Health and Safety Code, to read:

40100.7. (a) On and after July 1, 1994, Section 40100.5 shall not

apply to a county district if each city in the county consents, by the adoption of an ordinance or resolution, to the exclusion of the county district from the requirements of Section 40100.5. Within 60 days from the date of the adoption of an ordinance or resolution by all cities in the county to exclude the county district from the requirements of Section 40100.5, if requested by a majority of the cities in the county, the county district shall establish an advisory committee consisting of a mayor, or a city council member, from each city in the county. The members shall be selected by the city selection committee.

(b) Subdivision (a) shall become inapplicable, and Section 40100.5 shall apply, if, at any time after the condition prescribed in subdivision (a) has been met, a majority of the cities which contain a majority of the population in the incorporated areas of the county, as established by the most recent census data, have adopted resolutions requesting the application of Section 40100.5.

SEC. 2. Section 40101 of the Health and Safety Code is amended to read:

40101. (a) (1) The board of supervisors of a county in which a county district is functioning may appropriate funds to the county district, which funds shall be deposited in the treasury of the county district.

(2) All such appropriations are legal charges against the county.

(b) A county district may contract, by a memorandum of understanding, joint powers agreement, or other agreement, with the county in which the county district is functioning, to provide facilities and administrative, legal, health coverage, risk management, clerical, and other support services, including, but not limited to, those facilities and services that the county provided to the county district prior to July 1, 1994.

SEC. 3. Section 40152.5 is added to the Health and Safety Code, to read:

40152.5. (a) On and after July 1, 1994, Section 40152 shall not apply to a unified district if each city in the district consents, by the adoption of an ordinance or resolution, to the exclusion of the district from the requirements of Section 40152. Within 60 days from the date of the adoption of an ordinance or resolution by all cities in the district to exclude the district from the requirements of Section 40152, if requested by a majority of the cities in the district, the district shall establish an advisory committee consisting of a mayor, or a city council member, from each city in the district. Each city shall select its representative to the advisory committee.

(b) Subdivision (a) shall become inapplicable, and Section 40152 shall apply, if, at any time after the condition prescribed in subdivision (a) has been met, a majority of the cities which contain a majority of the population in the incorporated areas of the district, as established by the most recent census data, have adopted resolutions requesting the application of Section 40152.

SEC. 4. Section 40158 of the Health and Safety Code is amended

to read:

40158. (a) The board of supervisors of each county included, in whole or in part, within the unified district shall appropriate such funds as are necessary to carry out the purposes of the unified district, as determined by the unified district board, in accordance with the funding provisions specified in the agreement which created the unified district under Section 40151.

(b) A unified district may contract, by a memorandum of understanding, joint powers agreement, or other agreement, with a county or counties in which the unified district is functioning, to provide facilities and administrative, legal, health coverage, risk management, clerical, and other support services, including, but not limited to, those facilities and services that the county or counties provided to the unified district prior to July 1, 1994.

SEC. 5. Section 40374 of the Health and Safety Code is amended to read:

40374. (a) (1) At any time prior to the first receipt by a regional district of revenues from taxation, the counties within the regional district may loan any available money to the regional district for purposes of organization and operation, and such expenditures shall constitute a proper expenditure of county funds.

(2) The regional district board shall add the sums of money so borrowed from the counties to the first amount apportioned by the regional district board pursuant to Section 40371, and shall repay the counties for all money borrowed from the first revenues received from taxation.

(b) A regional district may contract, by a memorandum of understanding, joint powers agreement, or other agreement, with a county or counties in which the regional district is functioning, to provide facilities and administrative, legal, health coverage, risk management, clerical, and other support services, including, but not limited to, those services that the county or counties provided to the regional district prior to July 1, 1994.

SEC. 6. Section 40701.5 of the Health and Safety Code is amended to read:

40701.5. (a) Funding for a district may be provided by, but is not limited to, any one or any combination of the following sources:

(1) Grants.

(2) Subventions.

(3) Permit fees.

(4) Penalties.

(5) A surcharge or fee pursuant to Section 41081 or 44223 on motor vehicles registered in the district.

(b) Expenses of a district that are not met by the funding sources identified in subdivision (a), shall be provided by an annual per capita assessment on those cities which have agreed to have a member on the district board for purposes of Section 40100, 40152, 40322.5, 40704.5, or 40980 and on the county or counties included within the district. Any annual per capita assessment imposed by the

district on those cities and counties included within the district shall be imposed on an equitable per capita basis.

(c) Subdivision (b) does not apply to the San Joaquin Valley Unified Air Pollution Control District or, if that unified district ceases to exist, the valley district.

SEC. 7. Section 41080 of the Health and Safety Code is amended to read:

41080. (a) The Sacramento district may adopt a schedule of fees, levied on permitted and other sources of air pollution, subject to regulation by the Sacramento district, to recover its costs of implementing this chapter.

(b) The Sacramento district may contract with a county or counties, in which the Sacramento district is functioning, to provide facilities and administrative, legal, health coverage, risk management, clerical, and other support services, including, but not limited to, those facilities and services that the county or counties provided to the Sacramento district prior to July 1, 1994.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to except certain air pollution control districts from required changes in the composition of the membership of air pollution control district boards, which will become operative on July 1, 1994, it is necessary that this act take effect immediately.

CHAPTER 261

An act to amend Section 1281 of the Business and Professions Code, relating to clinical laboratories.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 1281 of the Business and Professions Code is amended to read:

1281. It is unlawful for any person to own, operate, maintain, direct, or engage in the business of operating a clinical laboratory, as

defined in this chapter, unless he or she possesses a valid clinical laboratory license issued by the department. In the event a health facility does not perform clinical laboratory services, but provides laboratory services to its patients under an agreement with another person or entity that holds and is operating under a valid clinical laboratory license, the health facility shall not be required to obtain a clinical laboratory license.

CHAPTER 262

An act to add Section 653l to the Penal Code, relating to crimes.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 653l is added to the Penal Code, to read:

653l. (a) Every person who telephones the 911 emergency line with the intent to annoy or harass another person is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), by imprisonment in a county jail for not more than six months, or by both the fine and imprisonment. Nothing in this section shall apply to telephone calls made in good faith.

(b) An intent to annoy or harass is established by proof of repeated calls over a period of time, however short, that are unreasonable under the circumstances.

(c) Upon conviction of a violation of this section, a person also shall be liable for all reasonable costs incurred by any unnecessary emergency response.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 263

An act to amend Sections 41220 and 41221 of the Health and Safety Code, relating to air pollution.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 41220 of the Health and Safety Code is amended to read:

41220. (a) The Mojave Desert district shall be governed by a district board composed of the following members:

(1) The members of the San Bernardino County Board of Supervisors who represent the first and third supervisorial districts of the county, or who, after reapportionment affecting the county supervisorial districts, represent any supervisorial district of the county that lies in whole or in part within the Mojave Desert district.

(2) One member of the city council of each incorporated city within the Mojave Desert district, who shall be appointed by the city council.

(3) Upon the incorporation of any new city within the boundaries of the Mojave Desert district, the city council of that city shall appoint one member of the city council to the Mojave Desert district board.

(4) If a district submits a resolution of inclusion pursuant to subdivision (c) of Section 41210, one or more members of the county board of supervisors or of a city council from the area to be included shall be appointed to the Mojave Desert district board, pursuant to agreement between the county board of supervisors or the city council, or both, and the Mojave Desert district board.

(5) At the time of the appointment of a member of the city council of a newly incorporated city to the Mojave Desert district board, as specified in paragraph (3), or upon making an agreement to appoint a member from an area included in the Mojave Desert district pursuant to paragraph (4), the Mojave Desert district board may revise the remaining membership of the Mojave Desert district board, as previously constituted, by adding or removing one or more members of the board of supervisors of a county having territory in the district, adding or removing one or more members of the city councils of previously incorporated cities within the district, or both.

(b) As used in this section, "city" means any city, town, or municipal corporation incorporated under the laws of this state.

SEC. 2. Section 41221 of the Health and Safety Code is amended to read:

41221. The Mojave Desert district board shall elect a chairperson every year from its membership. No member shall serve more than two consecutive terms as chairperson.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 264

An act to add Section 25417.1 to the Health and Safety Code, relating to hazardous materials.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 25417.1 is added to the Health and Safety Code, to read:

25417.1. The department shall publish a new edition of the consumer information booklet described in Section 10084.1 of the Business and Professions Code. The booklet shall, among other things, be in substantial compliance with the federal disclosure requirements regarding the safe management of lead and radon gas in housing, and shall be made available to the public on or before the date on which the Secretary of Housing and Urban Development submits to Congress the report required pursuant to subpart (B) of subdivision (d) of Section 4822 of Title 42 of the United States Code.

CHAPTER 265

An act to amend Section 1788 of, and to add Sections 1788.3 and 1793.6 to, the Health and Safety Code, relating to continuing care contracts.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 1788 of the Health and Safety Code is amended to read:

1788. (a) Any continuing care contract shall contain all of the following:

(1) The legal name and address of the provider.

(2) The name and address of the facility.

(3) The resident's name and address.

(4) If the transferor is someone other than the resident, the transferor's name and address shall be separately designated.

(5) If the provider has used the name of any charitable or religious or nonprofit organization in its title before January 1, 1979, and continues to use that name, and that organization is not responsible for the financial and contractual obligations of the provider, the provider shall include in every continuing care contract a conspicuous statement which clearly informs the transferor that the organization is not financially responsible.

(6) The date the contract is signed by the transferor.

(7) The duration of the contract.

(8) A list of the basic services to be provided to the resident.

(9) A list of all basic services for which charges in excess of the monthly fee will be made and the fees at the date of the contract for those services.

(10) The procedures and conditions under which residents may be voluntarily or involuntarily transferred from their designated living units. The transfer procedures, at a minimum, shall provide for all of the following:

(A) When, in the opinion of, at a minimum, the facility management, a physician and surgeon, appropriate specialist, or licensing official, any of the following conditions exist:

(i) The resident is nonambulatory. The definition of nonambulatory, as defined in Section 13131, shall either be stated in the contract or be cited, with a copy of it made available, as an attachment or by specifying that it will be provided upon request. If the resident occupies a room that has a fire clearance for nonambulatory residence, provision for transfer under the above circumstances is unnecessary.

(ii) Resident becomes mentally ill.

(iii) Transfer to the facility's skilled nursing facility or personal care unit is required for more efficient care and/or to protect the health of other residents, or because the level of care needed cannot lawfully be provided in the living unit.

(iv) Transfer to a nursing home or hospital is required and the provider has no facilities available for such care.

(B) Provision for transfer of a second resident when a shared accommodation arrangement is terminated.

(C) When transfer is requested or required for any other reason.

(11) Provisions for any change in the monthly rate and any refund of entrance fees when a resident transfers from any unit.

(12) The obligations of the provider in the event a resident is transferred.

(13) Whether the provider has any responsibility to resume care.

(14) The obligations of the provider for services provided while the resident is absent from the facility.

(15) The conditions under which the resident permanently

releases his or her living unit.

(16) All real and personal properties transferred, their value at the time of transfer, and how the value was ascertained.

(A) An itemized receipt which includes the information described above is acceptable, if incorporated as a part of the contract.

(B) With respect to the transfer of real property, a statement that the deed or other instrument of conveyance shall contain a recital that the transaction is made pursuant to a "continuing care contract" and may be subject to rescission by the transferor within 90 days from the date of the transfer.

(C) The failure to comply with this paragraph (16) shall not affect the validity of title to real property transferred pursuant to this chapter.

(17) The amount of the entrance fee.

(18) In the event two parties have jointly paid the entrance fee or other payment which allows them to occupy the unit, the contract shall define the allocation of fees.

(19) The amount of any processing fee.

(20) The amount of any monthly care fee.

(21) For contracts which require a monthly care fee or other periodic rate, the contract shall provide statements concerning all of the following:

(A) That the occupancy and use of the accommodations by the resident is contingent upon the regular payment of the fee.

(B) The regular rate of payment agreed upon (per day, week, or month).

(C) Whether payment will be made in advance or after services have been provided.

(D) Whether any adjustment in the monthly care fees is to be made by the provider for the support, maintenance, board, or lodging, which is supplied to a resident who requires medical attention when he or she is absent from the facility.

(E) If any credit or allowance is to be given to a resident who is absent from the facility or from meals, and if such credit is to be permitted at the discretion or by special permission of the provider.

(22) All contracts shall specify one of the following basic methods for calculating changes in monthly care fees:

(A) For prepaid contracts, which include monthly care fees, one of the following methods:

(i) Fees shall not be subject to change during the lifetime of the agreement.

(ii) Fees shall not be increased by more than a specified number of dollars in any one year and not more than a specified number of dollars during the lifetime of the agreement.

(iii) Fees shall not be increased in excess of a specified percentage over the preceding year and not more than a specified percentage during the lifetime of the agreement.

(B) For monthly fee contracts, changes in monthly fees shall be

based on projected costs, prior year per capita costs, and economic indicators.

(23) The contract shall provide for notification of the resident at least 30 days in advance of any change in the scope or price of any component of care or other services.

(24) The contract shall include a provision indicating whether the resident's rights under the contract include any proprietary interests in the assets of the provider or in the facility, or both.

(25) If there is a loan on the property, the contract shall advise residents that rights they may have to enforce continuing care contracts are subordinate to the rights of the lender.

(26) Notice that the living units are licensed as residential care facilities for the elderly and, as such, any duly authorized agent of the department may, upon proper identification and upon stating the purpose of his or her visit, enter and inspect the entire premises at any time, without advance notice.

(27) A conspicuous statement, in at least 10-point boldface type in immediate proximity to the space reserved for the signature of the transferor, that provides as follows: "You, the transferor, may cancel the transaction without cause at any time within 90 days from the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(28) Notice that during the cancellation period, the contract may be cancelled by the provider without cause.

(29) The terms and conditions under which the contract may be terminated after the cancellation period by either party, including any health or financial conditions.

(30) A statement that involuntary termination of the resident by the provider after the cancellation period shall be only for good and sufficient cause. Good and sufficient cause does not include participation in a residents' coalition, or contacting or filing a complaint with the State Department of Social Services or any other state, county, or city agency, or any office of an elected or appointed government official.

(31) A statement that at least 90 days written notice is required for an involuntary termination.

(32) A statement concerning the length of notice that is required by a resident for the voluntary termination after the cancellation period.

(33) The policy for refunding any portion of the entrance fee, in the event of cancellation, termination, or death.

(34) The following notice at the bottom of the signatory page:

"NOTICE" (date)

This is a continuing care contract as defined by Section 1771(j) or 1771(w) of Chapter 10 of Division 2 of the California Health and Safety Code. This contract form has been approved by the State Department of Social Services as required by Section 1787(b) of the

California Health and Safety Code. The basis for this approval was a determination that (provider name) has complied with specific requirements of the statutes. Approval by the department is neither a guaranty of performance nor an endorsement of contract provisions. Prospective transferors and residents are encouraged to carefully consider the benefits and risks of this contract before signing. You should seek financial and legal advice as needed.

(b) The contract may include, but is not limited to, and need not include, any of the following items:

(1) Provision for a resident who becomes financially unable to pay for his or her monthly care fees at some future date to be subsidized. If provision for subsidizing a resident is included, the following provisions may be included:

(A) A stipulation that the resident shall apply for any public assistance or other aid for which eligible and that the provider may apply on behalf of the resident.

(B) A stipulation that the provider shall be the final and conclusive determining body of any adjustments to be made or any action to be taken regarding any charitable consideration to be extended to any of its residents.

(C) Provision for the payment or entitlement of actual costs of care from any property acquired by the resident subsequent to the adjustment, as provided in subparagraph (B), or from any property not disclosed by the resident at the time of application.

(D) Provision that the provider may pay the monthly premium of the resident's health insurance coverage under Medicare to ensure that such payments will be made.

(E) Provision that the provider may receive an assignment from the resident of the right to apply for and to receive such benefits, for and on behalf of the resident.

(F) Provision that the provider is not responsible for the costs of furnishing the resident with any services, supplies, and medication, when reimbursement is available from any governmental agency.

(2) Provisions which limit responsibility for costs associated with the treatment or medication of an ailment or illness existing prior to the date of admission. In such cases, the medical or surgical exceptions, as disclosed by the medical entrance examination, shall be listed in the contract or in the medical report, which may be attached to and made a part of the contract.

(3) Legal remedies which may be applied in case any material misrepresentation or omission pertaining to assets or health has been made by the resident.

(4) A clause which restricts transfer or assignments of the resident's rights and privileges under a continuing care contract because of the personal nature of the contract.

(5) A clause for the protection of the provider in instances where it may wish to waive any of the terms or provisions of the contract in specific instances where the resident has breached the contract

without relinquishment of its right to insist upon compliance by the resident with all of the other terms or provisions.

(6) Provision for the reimbursement of any loss or damage beyond normal wear and tear suffered by the provider as the result of carelessness or negligence on the part of the resident.

(7) Provision that the resident agrees to observe off-limit areas of the facility as designated by the provider for safety reasons. However, the provider shall not attempt to absolve itself in the contract from liability for past or future negligence by any statement to that effect.

(8) Provision for the subrogation to the provider of the resident's rights in the case of injury to a resident caused as a result of the act or negligence of a third party.

(9) Provision for a lien on any judgment, settlement, or recovery for any additional expense incurred by the provider in caring for the resident as a result of injury.

(10) Provision that requires the cooperation of the resident in assisting in the diligent prosecution of any claim or action against any third party.

(11) Provision for the appointment of a conservator or guardian by a court of competent jurisdiction in the event a resident becomes unable to handle his or her personal or financial affairs.

(12) Provision that, in the event a provider whose property is tax exempt is required to pay property taxes, or in-lieu taxes, the additional costs will be charged to the resident on a pro rata basis.

(13) Other provisions approved by the department.

(c) Every contract shall contain a copy of the current audited financial statement. For a new provider unable to furnish a current audited financial statement, which will accurately reflect the financial ability of the provider to fulfill the continuing care contract promises, this requirement shall include the provider's current audited financial statement, and any supplemental statements that have been submitted to the department after the date of the audited financial statement, together with an additional attachment that discloses all of the following:

(1) That the reserve requirement has not yet been determined or met, but that entrance fees shall be held in escrow until the requirements of Section 1783.2 have been met.

(2) That the ability to provide the services promised in the continuing care contract will depend on successful compliance with the approved financial plan.

(3) The approved financial plan for meeting the reserve requirements.

(d) Every contract shall contain a completed form in duplicate, captioned "Notice of Cancellation." Such notice shall be attached to the contract, be easily detachable, and shall contain, in at least 10-point boldface type, the following statement:

"NOTICE OF CANCELLATION" (date)

/Enter date of transaction/

You may cancel this transaction, without any penalty within 90 calendar days from the above date.

If you cancel, any property transferred, any payments made by you under the contract, and any negotiable instrument executed by you will be returned within 14 calendar days after making possession of the living unit available to the provider, and any security interest arising out of the transaction will be canceled.

If you cancel, you are obligated for a reasonable processing fee to cover costs and the reasonable value of the services received by you from the provider up to the date you canceled or made available to the provider the possession of any living unit delivered to you under this contract, whichever is later.

If you cancel, you must return possession of any living unit delivered to you under this contract to the provider in substantially the same condition as when received.

Possession of the living unit must be made available to the provider within 20 calendar days of your notice of cancellation. If you fail to make the possession of any living unit available to the provider, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____

/Name of Provider/

at _____

/Address of provider's place of business/

not later than midnight of _____(date).

I hereby cancel this transaction _____

(Transferor's signature)

SEC. 2. Section 1788.3 is added to the Health and Safety Code, to read:

1788.3. (a) Any contract containing a clause that provides for a resident to be evicted, or provides for a contract to be canceled for "just cause," "good cause," "good and sufficient cause," or other similar provision, shall also include a provision that none of the following activities by the resident, or on behalf of the resident, constitutes "just cause," "good cause," "good and sufficient cause," or otherwise activates the eviction or cancellation provision:

(1) Filing or lodging a formal or informal complaint with the department or other appropriate authority.

(2) Participation in an organization or affiliation of residents, or other similar lawful activity.

(b) No provider shall discriminate or retaliate in any manner against any resident of the continuing care retirement community for contacting the State Department of Social Services, or any other state, county, or city agency, or any elected or appointed government official, to file a complaint or for any other reason, or for participation in a residents' coalition.

SEC. 3. Section 1793.6 is added to the Health and Safety Code, to read:

1793.6. (a) The department may issue citations pursuant to this section containing orders of abatement and assessing civil penalties against any person who violates Section 1771.2 or 1793.5.

(b) If upon inspection or investigation, the department has probable cause to believe that an entity is violating Section 1771.2 or 1793.5, the department may issue a citation to that entity. Each citation shall be in writing and shall describe with particularity the basis of the citation. Each citation shall contain an order of abatement. In addition to the civil penalties pursuant to Section 1793.27, a provider in violation of the abatement order shall be liable for an assessment of a civil penalty in the amount of two hundred dollars ($200) per day for violation of the abatement order.

(c) The civil penalty authorized in subdivision (b) shall be imposed if an uncertified facility is operated and the operator refuses to seek a certificate of authority or the operator seeks a certificate of authority and the application is denied and the operator continues to operate the uncertificated facility, unless other remedies available to the department, including prosecution, are deemed more effective by the department.

(d) Service of a citation issued under this section may be made by certified mail at the last known business address or residence address of the person cited.

(e) Any person served with a citation under this section may appeal to the department in writing within 15 working days after service of the citation with respect to violations alleged, scope of the order of abatement, or amount of civil penalty assessed.

(f) If the person cited fails to appeal to the department in writing within 15 working days after service of the citation, the citation shall be a final order of the department and shall not be subject to review by any court or agency. The department may extend the 15-day period for good cause.

(g) If the person cited under this section makes a timely appeal of the citation, the department shall provide an opportunity for a hearing. The department shall thereafter issue a decision, based on findings of fact, affirming, modifying, or vacating the citation or directing other appropriate relief. The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have

all the powers granted therein.

(h) After exhaustion of the review procedures specified in this section, the department may apply to the appropriate superior court for a judgment in the amount of the civil penalty and an order compelling the cited entity to comply with the order of abatement. The application shall include a certified copy of the final order of the department, and shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(i) Notwithstanding any other provision of law, the department may waive part of the civil penalty if the entity against whom the civil penalty is assessed satisfactorily completes all the requirements for, and is issued, a certificate of authority.

(j) Civil penalties recovered pursuant to this section shall be deposited into the Continuing Care Provider Fee Fund, but notwithstanding Section 1778 shall be available for expenditure only upon express appropriation by the Legislature.

CHAPTER 266

An act to amend Section 25503.9 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 25503.9 of the Business and Professions Code is amended to read:

25503.9. Nothing in this division prohibits a winegrower from giving or selling wine, a beer manufacturer from giving or selling beer, or a licensed importer from giving or selling beer or wine, at prices other than those contained in schedules filed with the department, to any of the following:

(a) A nonprofit charitable corporation or association exempt from payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States and Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code.

(b) A nonprofit incorporated trade association that is exempt from payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States and Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code, the members of which trade association are licensed under this division. However, the wine and beer shall be used solely for a convention or meeting of the nonprofit incorporated trade association.

(c) A nonprofit corporation or association that is exempt from

payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States and is defined as a tax exempt organization under Section 23701a, 23701d, 23701e, 23701f, or 23701r of the Revenue and Taxation Code. Wine or beer given or sold by a winegrower, beer manufacturer, or licensed importer pursuant to this subdivision may be furnished only in connection with public service or fundraising activities including picnics, parades, fairs, amateur sporting events, agricultural exhibitions, or similar events.

CHAPTER 267

An act to add Section 12001.5 to the Fish and Game Code, relating to fish and game.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 12001.5 is added to the Fish and Game Code, to read:

12001.5. (a) In addition to any other penalty or fine imposed pursuant to this code, if a person has been convicted of one or more offenses that was a violation of a section listed in subdivision (b) separate from the offense before the court, the court may order as a condition of probation upon conviction of the offense before the court that is also a violation of a section listed in subdivision (b), that the person attend the hunter safety course designated in Section 3051 and perform community service, preferably relating to natural resources if that type of community service is available, as follows:

(1) If the person has one separate conviction, not more than 200 hours of community service.

(2) If the person has two or more separate convictions, not more than 300 hours of community service.

(b) This section applies to violations relating to a taking in Sections 3007, 3700, 4330, and 4750, and a sale or purchase of parts of a bear in Section 4758.

CHAPTER 268

An act to amend Sections 12110 and 22651 of the Vehicle Code, relating to vehicles.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 12110 of the Vehicle Code is amended to read:

12110. (a) Except as provided in subdivision (b), no towing service shall provide and no person or public entity shall accept any direct or indirect commission, gift, or any compensation whatever from a towing service in consideration of arranging or requesting the services of a tow truck. As used in this section, "arranging" does not include the activities of employees or principals of a provider of towing services in responding to a request for towing services.

(b) Subdivision (a) does not preclude a public entity otherwise authorized by law from requiring a fee in connection with the award of a franchise for towing vehicles on behalf of that public entity. However, the fee in such cases shall not exceed the amount necessary to reimburse the public entity for its actual and reasonable costs incurred in connection with the towing program.

(c) Any towing service or any employee of a towing service that accepts or agrees to accept any money or anything of value from a repair shop and any repair shop or any employee of a repair shop that pays or agrees to pay any money or anything of value as a commission, referral fee, inducement, or in any manner a consideration, for the delivery or the arranging of a delivery of a vehicle, not owned by the repair shop or towing service, for the purpose of storage or repair, is guilty of a misdemeanor.

SEC. 2. Section 22651 of the Vehicle Code is amended to read:

22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city or a county in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When any vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When any vehicle is found upon a highway or any public lands and a report has previously been made that the vehicle has been

stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When any vehicle, except any highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person or persons in charge of a vehicle upon a highway or any public lands are, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(i) (1) When any vehicle, other than a rented vehicle, is found upon a highway or any public lands, or is removed pursuant to this code, and it is known to have been issued five or more notices of parking violation, to which the owner or person in control of the vehicle has not responded within 21 days of citation issuance or 10 days of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and any other vehicle registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(4) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

(j) When any vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When any vehicle is parked or left standing upon a highway

for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(*l*) When any vehicle is illegally parked on a highway in violation of any local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(m) Wherever the use of the highway, or any portion thereof, is authorized by local authorities for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of any vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(n) Whenever any vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. No vehicle may be removed unless signs are posted giving notice of the removal.

(o) (1) When any vehicle is found upon a highway, any public lands, or an offstreet parking facility with a registration expiration date in excess of one year before the date it is found on the highway, public lands, or the offstreet parking facility. However, if the vehicle is occupied, only a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle. For purposes of this subdivision, the vehicle shall be released to the owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(2) As used in this subdivision, "offstreet parking facility" means any offstreet facility held open for use by the public for parking vehicles and includes any publicly owned facilities for offstreet parking, and privately owned facilities for offstreet parking where no fee is charged for the privilege to park and which are held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5 and there is no passenger in the vehicle who has a valid driver's license and authorization to operate the vehicle. Any vehicle so removed from the highway or any public lands or from private property after having been on a highway or public lands shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever any vehicle is parked for more than 24 hours on a

portion of highway which is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When any vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s) (1) When any vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a vehicle which is properly permitted or otherwise authorized by the Department of Transportation, is stopped, parked, or left standing for more than eight hours within a roadside rest area or viewpoint.

(2) For purposes of this subdivision, a roadside rest area or viewpoint is a publicly maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider, within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 269

An act to amend Section 1465.5 of the Penal Code, and to amend Section 9394.5 of the Welfare and Institutions Code, relating to vehicle parking.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 1465.5 of the Penal Code is amended to read:

1465.5. An assessment of two dollars ($2) for every ten dollars ($10) or fraction thereof, for every fine, forfeiture, or parking penalty imposed and collected pursuant to Section 42001.5 of the

Vehicle Code for violation of Section 22507.8 of the Vehicle Code, may be imposed by each county upon the adoption of a resolution by the board of supervisors. An assessment imposed by this section shall be collected and disbursed as provided in Section 9394.5 of the Welfare and Institutions Code.

SEC. 2. Section 9394.5 of the Welfare and Institutions Code is amended to read:

9394.5. (a) Each county shall deposit funds collected pursuant to Section 1465.5 of the Penal Code in its general fund, to be available for use only for the support of services provided under this chapter in that county, including county administrative costs not exceeding 10 percent of the funds collected, except as otherwise provided in this subdivision. A county may join with other counties to establish and fund a program of services under this chapter. A county or a number of counties may, in cooperation with the department, fund or jointly fund a project or projects pursuant to Section 9314.5.

(b) Funds utilized pursuant to this section shall not supplant, be offset against, or in any way reduce funds otherwise appropriated for the support of services provided under this chapter.

CHAPTER 270

An act to repeal Sections 3339, 3347, and 3348 of the Civil Code, to repeal Sections 4182, 4187, 4601, 4602, 4603, 4604, and 4605 of the Fish and Game Code, to repeal Sections 11241, 11242, 11243, 16701, 16702, 16703, 16801, 16802, 16803, and 16804 of the Food and Agricultural Code, to repeal Sections 14710 and 14711 of the Government Code, to repeal Sections 3294, 3302, 3303, 3304, 3305, 3306, 3307, 3308, 3309, 3310, 4665.6, and 5617 of the Health and Safety Code, and to repeal Sections 225, 226, 227, 228, 229, 230, 231, 232, 366, 367, 652, 779, and 780 of the Penal Code, and to repeal Sections 2266 and 27601 of the Vehicle Code, relating to obsolete laws.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 3339 of the Civil Code is repealed.

SEC. 2. Section 3347 of the Civil Code is repealed.

SEC. 3. Section 3348 of the Civil Code is repealed.

SEC. 4. Section 4182 of the Fish and Game Code is repealed.

SEC. 5. Section 4187 of the Fish and Game Code is repealed.

SEC. 6. Section 4601 of the Fish and Game Code is repealed.

SEC. 7. Section 4602 of the Fish and Game Code is repealed.

SEC. 8. Section 4603 of the Fish and Game Code is repealed.

SEC. 9. Section 4604 of the Fish and Game Code is repealed.

SEC. 10. Section 4605 of the Fish and Game Code is repealed.

SEC. 17. Section 11241 of the Food and Agricultural Code is repealed.
SEC. 18. Section 11242 of the Food and Agricultural Code is repealed.
SEC. 19. Section 11243 of the Food and Agricultural Code is repealed.
SEC. 20. Section 16701 of the Food and Agricultural Code is repealed.
SEC. 21. Section 16702 of the Food and Agricultural Code is repealed.
SEC. 22. Section 16703 of the Food and Agricultural Code is repealed.
SEC. 23. Section 16801 of the Food and Agricultural Code is repealed.
SEC. 24. Section 16802 of the Food and Agricultural Code is repealed.
SEC. 25. Section 16803 of the Food and Agricultural Code is repealed.
SEC. 25.5. Section 16804 of the Food and Agricultural Code is repealed.
SEC. 26. Section 14710 of the Government Code is repealed.
SEC. 27. Section 14711 of the Government Code is repealed.
SEC. 28. Section 3294 of the Health and Safety Code is repealed.
SEC. 29. Section 3302 of the Health and Safety Code is repealed.
SEC. 30. Section 3303 of the Health and Safety Code is repealed.
SEC. 31. Section 3304 of the Health and Safety Code is repealed.
SEC. 32. Section 3305 of the Health and Safety Code is repealed.
SEC. 33. Section 3306 of the Health and Safety Code is repealed.
SEC. 34. Section 3307 of the Health and Safety Code is repealed.
SEC. 35. Section 3308 of the Health and Safety Code is repealed.
SEC. 36. Section 3309 of the Health and Safety Code is repealed.
SEC. 37. Section 3310 of the Health and Safety Code is repealed.
SEC. 38. Section 4665.6 of the Health and Safety Code is repealed.
SEC. 39. Section 5617 of the Health and Safety Code is repealed.
SEC. 40. Section 225 of the Penal Code is repealed.
SEC. 41. Section 226 of the Penal Code is repealed.
SEC. 42. Section 227 of the Penal Code is repealed.
SEC. 43. Section 228 of the Penal Code is repealed.
SEC. 44. Section 229 of the Penal Code is repealed.
SEC. 45. Section 230 of the Penal Code is repealed.
SEC. 46. Section 231 of the Penal Code is repealed.
SEC. 47. Section 232 of the Penal Code is repealed.
SEC. 48. Section 366 of the Penal Code is repealed.
SEC. 49. Section 367 of the Penal Code is repealed.
SEC. 50. Section 652 of the Penal Code is repealed.
SEC. 51. Section 779 of the Penal Code is repealed.
SEC. 52. Section 780 of the Penal Code is repealed.
SEC. 53. Section 2266 of the Vehicle Code is repealed.
SEC. 54. Section 27601 of the Vehicle Code is repealed.

CHAPTER 271

An act to amend Sections 19005 and 19134 of, to add Section 19011 to, and to repeal Section 19029 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 19005 of the Revenue and Taxation Code is amended to read:

19005. (a) The tax, and any interest and penalties, shall be paid to the Franchise Tax Board. Except as provided in Section 19011, remittances may be in the form of a check, payable in United States funds to the Franchise Tax Board, at the time and in the manner as the Franchise Tax Board may prescribe. If a check is not paid by the bank on which it is drawn, the taxpayer tendering the check remains liable for the payment of the tax, and all interest and penalties, as if the check had not been tendered.

(b) Notwithstanding Title 1.3 (commencing with Section 1747) of Part 4 of Division 3 of the Civil Code, the Franchise Tax Board may allow remittances to be in the form of a credit account number and authorization to draw upon a specified credit account, at that time and under those conditions as the Franchise Tax Board may prescribe. Remittances in the form of an authorization to draw upon a specified credit account shall include an amount, not to exceed 2 percent of the balance otherwise due, for purposes of paying the discount rate associated with drawing upon the credit account.

(c) Remittances made pursuant to subdivision (b) may be drawn on an account with a financial institution which agrees to add the discount rate associated with the use of the credit account number to the credit card holder's billing. Remittances drawn as described in this subdivision shall not include an amount for purposes of paying the discount rate associated with drawing upon the credit account.

SEC. 2. Section 19011 is added to the Revenue and Taxation Code, to read:

19011. (a) All payments required under this part, regardless of the income (or taxable) year to which the payments apply shall be remitted to the Franchise Tax Board by electronic funds transfer pursuant to Division 11 (commencing with Section 11101) of the Commercial Code, once any of the following conditions are met:

(1) With respect to any bank or corporation, the estimated tax payment made pursuant to Section 19025 or the payment made pursuant to Section 18604 with regard to an extension of time to file exceeds fifty thousand dollars ($50,000) in any income year beginning on or after January 1, 1991, or exceeds twenty thousand dollars ($20,000) in any income year beginning on or after January

1, 1995.

(2) With respect to any bank or corporation, the total tax liability exceeds two hundred thousand dollars ($200,000) in any income year beginning on or after January 1, 1991, or exceeds eighty thousand dollars ($80,000) in any income year beginning on or after January 1, 1995. For purposes of this section, total tax liability shall be the total tax liability as shown on the original return, after any adjustment made pursuant to Section 19051.

(3) A partnership or taxpayer (for purposes of this section, "taxpayer") submits a request to the Franchise Tax Board and is granted permission to make electronic funds transfers.

(b) A taxpayer required to remit payments to the Franchise Tax Board by electronic funds transfer may elect to discontinue making payments where the threshold requirements set forth in paragraphs (1) and (2) of subdivision (a) were not met for the preceding income (or taxable) year. The election shall be made in a form and manner prescribed by the Franchise Tax Board.

(c) Any taxpayer required to remit payment by electronic funds transfer pursuant to this section who makes payment by other means shall pay a penalty of 10 percent of the amount paid, unless it is shown that the failure to make payment as required was for reasonable cause and was not the result of willful neglect.

(d) Any taxpayer required to remit payments by electronic funds transfer pursuant to this section may request a waiver of those requirements from the Franchise Tax Board. The Franchise Tax Board may grant a waiver only if it determines that the particular amounts paid in excess of the threshold amounts established in this section were not representative of the taxpayer's tax liability. If a taxpayer is granted a waiver, subsequent remittances by electronic funds transfer shall be required only on those terms set forth in the waiver.

(e) The Franchise Tax Board shall accept remittances by electronic funds transfer pursuant to this section no later than January 1, 1993. Electronic funds transfer procedures, in addition to those described in subdivision (f), shall be as prescribed by the Franchise Tax Board. Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(f) For purposes of this section:

(1) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfer shall be accomplished by an

automated clearinghouse debit, automated clearinghouse credit, a Federal Reserve Wire Transfer (Fedwire), or by an international funds transfer.

(2) "Automated clearinghouse" means any federal reserve bank, or an organization established by agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and that authorizes an electronic transfer of funds between those banks or bank accounts.

(3) "Automated clearinghouse debit" means a transaction in which any department of the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the taxpayer's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction by the taxpayer shall be paid by the state.

(4) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the taxpayer, through its own bank, originates an entry crediting the state's bank account and debiting its own bank account. Banking costs incurred by the state for the automated clearinghouse credit transaction may be charged to the taxpayer.

(5) "Fedwire" means any transaction originated by the taxpayer and utilizing the national electronic payment system to transfer funds through federal reserve banks, pursuant to which the taxpayer debits its own bank account and credits the state's bank account. Electronic funds transfers may be made by Fedwire only if prior approval is obtained from the Franchise Tax Board and the taxpayer is unable, for reasonable cause, to make payments pursuant to paragraph (3) or (4). Banking costs charged to the taxpayer and to the state may be charged to the taxpayer.

(6) "International funds transfer" means any transaction originated by the taxpayer and utilizing the international electronic payment system to transfer funds, pursuant to which the taxpayer debits its own bank account and credits the state's bank account.

(7) In determining whether a payment or total tax liability exceeds the amounts established in subdivision (a), the income of all taxpayers whose income derived from, or attributable to, sources within this state is required to be determined by a combined report shall be aggregated and the total aggregate amount shall be considered to be the income of a single taxpayer for purposes of determining the payment or total tax liability of a single taxpayer.

SEC. 3. Section 19029 of the Revenue and Taxation Code is repealed.

SEC. 4. Section 19134 of the Revenue and Taxation Code is amended to read:

19134. (a) The provisions of Section 6657 of the Internal Revenue Code, relating to bad checks, shall apply except as otherwise provided.

(b) Section 6657 of the Internal Revenue Code, relating to bad checks, is modified to apply to payments made by credit card remittance or electronic funds transfer (as provided by Section 19011) in addition to payments made by check or money order.

(c) For payments received prior to January 1, 1993, this section shall be applied only to payments pertaining to taxable (or income) years beginning on or after January 1, 1990.

(d) For payments received on or after January 1, 1993, this section shall be applied to all payments, without regard to taxable (or income) year.

CHAPTER 272

An act to amend Sections 14504 and 14551 of, and to repeal Sections 14502.5, 14537.5, 14542.5, 14543, 14544, 14586.6, and 14587.5 of, the Public Resources Code, relating to beverage containers.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 14502.5 of the Public Resources Code is repealed.

SEC. 2. Section 14504 of the Public Resources Code is amended to read:

14504. (a) "Beverage" means beer and other malt beverages, wine and distilled spirit coolers, carbonated mineral and soda waters, and similar carbonated soft drinks in liquid form which are intended for human consumption.

(b) "Beverage" does not include wine, or wine from which alcohol has been removed in whole or in part, whether or not sparkling or carbonated.

(c) "Soft drink" does not include 100 percent fruit juice to which carbonation is added.

SEC. 3. Section 14537.5 of the Public Resources Code is repealed.

SEC. 4. Section 14542.5 of the Public Resources Code is repealed.

SEC. 5. Section 14543 of the Public Resources Code is repealed.

SEC. 6. Section 14544 of the Public Resources Code is repealed.

SEC. 7. Section 14551 of the Public Resources Code is amended to read:

14551. (a) The department shall establish reporting periods for the reporting of redemption rates and recycling rates. Each reporting period shall be six months. The department shall determine all of the following for each reporting period and shall issue a report on its determinations, within 70 days of the end of each reporting period:

(1) Sales of beverages in aluminum beverage containers, bimetal

beverage containers, glass beverage containers, plastic beverage containers, and other beverage containers in this state, including refillable beverage containers.

(2) Returns for recycling, and returns not for recycling, of empty aluminum beverage containers, bimetal beverage containers, glass beverage containers, plastic beverage containers, and other beverage containers in this state, including refillable beverage containers returned to distributors pursuant to Section 14572. These numbers shall be calculated using the average current weights of beverage containers, as determined and reported by the department. To these numbers shall be added and separately reported the following, if greater than, or equal to, zero:

(A) All empty postfilled aluminum, glass, and plastic food or drink packaging materials sold in the state, returned for recycling, and reported by weight to the department which do not have a refund value less the number specified in subparagraph (B).

(B) The number of beverage containers which comprise the first five percentage points of the redemption rate without including the empty postfilled aluminum, glass, and plastic food or drink packaging materials sold in the state, returned for recycling and reported by weight to the department which do not have a refund value.

(3) An aluminum beverage container redemption rate, the numerator of which shall be the number of empty aluminum beverage containers returned, including refillable aluminum beverage containers and empty postfilled aluminum food or drink packaging material included in paragraph (2), and the denominator of which shall be the number of aluminum beverage containers sold in this state.

(4) An aluminum beverage container recycling rate, the numerator of which shall be the number of empty aluminum beverage containers returned for recycling, including refillable aluminum beverage containers, and the denominator of which shall be the number of aluminum beverage containers sold in this state.

(5) A bimetal beverage container redemption rate, the numerator of which shall be the number of empty bimetal beverage containers returned, and the denominator of which shall be the number of bimetal beverage containers sold in this state.

(6) A bimetal beverage container recycling rate, the numerator of which shall be the number of empty bimetal containers returned for recycling, including refillable bimetal beverage containers, and the denominator of which shall be the number of bimetal beverage containers sold in this state.

(7) A glass beverage container redemption rate, the numerator of which shall be the number of empty glass beverage containers returned, including refillable glass beverage containers and empty postfilled food or drink packaging materials included in paragraph (2), and the denominator of which shall be the number of glass beverage containers sold in this state.

(8) A glass beverage container recycling rate, the numerator of

which shall be the number of empty glass beverage containers returned for recycling, including refillable glass beverage containers, and the denominator of which shall be the number of glass beverage containers sold in this state.

(9) A plastic beverage container redemption rate, the numerator of which shall be the number of empty plastic beverage containers returned, including refillable plastic beverage containers and empty postfilled food or drink packaging materials included in paragraph (2), and the denominator of which shall be the number of plastic beverage containers sold in this state.

(10) A plastic beverage container recycling rate, the numerator of which shall be the number of empty plastic beverage containers returned for recycling, including refillable plastic beverage containers, and the denominator of which shall be the number of plastic beverage containers sold in this state.

(11) A redemption rate for other beverage containers, the numerator of which shall be the number of empty beverage containers other than those containers specified in paragraphs (1) to (10), inclusive, returned, and the denominator of which shall be the number of beverage containers, other than those containers specified in paragraphs (1) to (10), inclusive, sold in this state.

(12) A recycling rate for other beverage containers, the numerator of which shall be the number of empty beverage containers other than those containers specified in paragraphs (1) to (10), inclusive, returned for recycling, and the denominator of which shall be the number of beverage containers, other than those containers specified in paragraphs (1) to (10), inclusive, sold in this state.

(13) The department may define categories of other beverage containers, and report a redemption rate and a recycling rate for each such category of other beverage containers.

(14) The volumes of materials collected from certified recycling centers, by city or county, as requested by the city or county, if the reporting is consistent with the procedures established pursuant to Section 14554 to protect proprietary information.

(b) The department shall determine the manner of collecting the information for the reports specified in subdivision (a), including establishing procedures, to protect any proprietary information concerning the sales and purchases.

SEC. 8. Section 14586.6 of the Public Resources Code is repealed.

SEC. 9. Section 14587.5 of the Public Resources Code is repealed.

CHAPTER 273

An act to amend Section 12730 of the Business and Professions Code, relating to weights and measures.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 12730 of the Business and Professions Code is amended to read:

12730. (a) Except as provided in subdivision (a) or (b) of Section 12701 or this section, farm products sold by bulk weight or delivered to a processing or conditioning establishment for processing, conditioning, or sale, shall be weighed by a weighmaster, and a weighmaster certificate of the weight shall be issued to the producer with a duplicate copy issued to the buyer, conditioner, or processor.

(b) When the processing or conditioning charges or purchase is based on the bulk weight of the finished product, the finished product shall also be weighed by a weighmaster, and a second weighmaster certificate shall be issued to the producer with a duplicate copy issued to the buyer, conditioner, or processor.

(c) A producer whose product is delivered, but is not sold, to a processor or conditioner for processing or conditioning, may waive, in writing, his or her right to have the product weighed when the processing or conditioning establishment is operated by a producer of farm products and the processing or conditioning is incidental to the production of farm products. As used in this subdivision, "incidental" means that the income derived from the processing or conditioning operation represents not more than 25 percent of the total income of the producer operating the processing or conditioning establishment.

(d) This section does not apply to any nonprofit cooperative association that is organized and operating pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code, except as to that portion of activities that involves the handling or dealing in any farm product of any nonmember of the nonprofit cooperative association.

(e) Subdivision (a), as it applies to tree nuts delivered for processing or conditioning, does not apply to tree nut hullers and shellers, if there is a written contract which waives the producer's right to have the unprocessed or unconditioned product weighed. Notwithstanding the waiver, the finished product shall be weighed by a weighmaster and a weighmaster certificate shall be issued to the grower, with a duplicate copy issued to the buyer, conditioner, or processor.

(f) The term "farm products" includes all agricultural, horticultural, viticultural, and vegetable products of the soil,

flaxseed, and cottonseed, but does not include timber, timber products, milk, and milk products.

CHAPTER 274

An act to add Section 87104 to the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 87104 is added to the Government Code, to read:

87104. (a) No public official of a state agency shall, for compensation, act as an agent or attorney for, or otherwise represent, any other person by making any formal or informal appearance before, or by making any oral or written communication to, his or her state agency or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing action on a contract, grant, loan, license, permit, or other entitlement for use.

(b) For purposes of this section, a "public official" is any person defined in Section 82048, and every member of any advisory committee of a state agency, whether the committee is created by statute or otherwise.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 3. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 275

An act to amend Section 27604 of the Health and Safety Code, relating to food facilities.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 27604 of the Health and Safety Code is amended to read:

27604. (a) (1) No unpackaged food that has been served to any person or returned from any eating area shall be served again or used in the preparation of other food.

(2) No food prepared or stored in a private home shall be used, stored, served, offered for sale, sold, or given away in a food facility.

(3) Except as provided in paragraph (4), a private home shall not be used for the purpose of giving away, selling, or handling food at retail, as defined in Section 27536.

(4) Nonperishable, prepackaged food may be given away, sold, or handled from a private home.

(b) Except as provided in subdivision (c) of Section 27621, every bakery product shall have a protective wrapping which shall bear a label which complies with the labeling requirements prescribed by the Sherman Food, Drug, and Cosmetic Law (Division 21 (commencing with Section 26000)). Bakery products sold directly to a restaurant, catering service, retail bakery, or sold over the counter directly to the consumer by the manufacturer or bakery distributor shall be exempt from the provisions of this subdivision. French style, hearth-baked, or hard-crusted loaves and rolls shall be considered properly wrapped if contained in an open-end bag of sufficient size to enclose the loaves or rolls.

CHAPTER 276

An act to amend Section 25201.5 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 25201.5 of the Health and Safety Code is amended to read:

25201.5. (a) Notwithstanding any other provision of law, a hazardous waste facilities permit is not required for a generator who

treats hazardous waste of a total weight of not more than 500 pounds, or a total volume of not more than 55 gallons, in any calendar month, if both of the following conditions are met:

(1) The hazardous waste is not an extremely hazardous waste and is listed in Section 67450.11 of Title 22 of the California Code of Regulations, as in effect on January 1, 1992, as eligible for treatment pursuant to the regulations adopted by the department for operation under a permit-by-rule and the treatment technology used is approved for that waste stream in Section 67450.11 of Title 22 of the California Code of Regulations for treatment under a permit-by-rule.

(2) The generator is not otherwise required to obtain a hazardous waste facilities permit or other grant of authorization for any other hazardous waste management activity at the facility.

(b) Notwithstanding any other provision of law, treatment in the following units is ineligible for exemption pursuant to subdivision (a) or (c):

(1) Landfills.

(2) Surface impoundments.

(3) Injection wells.

(4) Waste piles.

(5) Land treatment units.

(6) Thermal destruction units.

(c) Notwithstanding any other provision of law, a hazardous waste facilities permit or other grant of authorization is not required to conduct the following treatment activities, if the generator treats the following hazardous waste streams using the treatment technology required by this subdivision:

(1) The generator treats resins which are mixed or cured in accordance with the manufacturer's instructions, including the treatment of multicomponent and preimpregnated resins by mixing or curing resins in accordance with the manufacturer's instructions.

(2) The generator treats a container of 110 gallons or less capacity, which is not constructed of wood, paper, cardboard, fabric, or any other similar absorptive material, for the purposes of emptying the container as specified by Section 66261.7 of Title 22 of the California Code of Regulations, as revised July 1, 1990, or treats the inner liners removed from empty containers that once held hazardous waste or hazardous material. The generator shall treat the container or inner liner by using the following technologies, if the treated containers and rinseate are managed in compliance with the applicable requirements of this chapter:

(A) The generator rinses the container or inner liner with a suitable liquid capable of dissolving or removing the hazardous constituents which the container held.

(B) The generator uses physical processes, such as crushing, shredding, grinding, or puncturing, that change only the physical properties of the container or inner liner, if the container or inner liner is first rinsed as provided in subparagraph (A) and the rinseate is removed from the container or inner liner.

(3) The generator conducts drying by pressing or by passive or heat-aided evaporation to remove water from wastes classified as special wastes by the department pursuant to Section 66261.124 of Title 22 of the California Code of Regulations.

(4) The generator conducts magnetic separation or screening to remove components from wastes classified as special wastes by the department pursuant to Section 66261.124 of Title 22 of the California Code of Regulations.

(5) The generator neutralizes wastes which are hazardous solely due to corrosivity or toxicity that results only from the acidic or alkaline material, in elementary neutralization units, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, if the wastes result solely from the regeneration of ion exchange media used to demineralize water, do not contain more than 10 percent acid or base concentration by weight, and are treated in vessels and piping constructed of materials compatible with the range of temperatures and pH levels, and subject to appropriate pH and temperature controls.

(6) The generator neutralizes acidic wastes which are hazardous solely due to corrosivity resulting from the presence of food or food by-products, and alkaline or acidic waste, other than wastes containing nitric acid, at SIC Code Group 20, food and kindred product facilities, as defined in subdivision (p) of Section 25501, if both of the following conditions are met:

(A) The neutralization process does not result in the emission of volatile hazardous waste constituents or toxic air contaminants.

(B) The neutralization process is required in order to meet discharge or other regulatory requirements.

(7) The generator processes effluent hazardous waste for disposal from the processing of silver halide-based imaging products, if all of the following conditions are met:

(A) The effluent is a hazardous waste solely due to its silver content.

(B) The effluent is treated within 90 days of its generation.

(C) The effluent is treated in a tank or container.

(D) The total influent hazardous waste stream treated does not exceed 500 gallons in any calendar month.

(E) The effluent is treated with a technology or combination of technologies which recover the silver to a level less than 5 mg/l total silver in the final waste water discharge, or a lower level as may be set by the local publicly owned treatment works.

(8) Except as provided for specific waste streams in Section 25200.3, the generator conducts the separation by gravity of the following, if the activity is conducted in impervious tanks or containers constructed of noncorrosive materials, the activity does not involve the addition of heat or other form of treatment, or the addition of chemicals other than flocculants and demulsifiers, and the activity is managed in compliance with applicable requirements of federal, state, or local agency or treatment works:

(A) The settling of solids from waste where the resulting aqueous stream is not hazardous.

(B) The separation of oil/water mixtures and separation sludges, if the average oil recovered per month is less than 25 barrels.

(9) The generator is a laboratory which is certified by the State Department of Health Services, or is a laboratory which is operated by an educational institution, which treats waste water which is generated onsite solely as a result of analytical testing, or which is a laboratory which treats less than one gallon of hazardous waste, which is generated onsite, in any single batch, subject to the following:

(A) The waste water treated is hazardous solely due to corrosivity or toxicity that results only from the acidic or alkaline material, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, or is excluded from the definition of hazardous waste by subparagraph (E) of paragraph (2) of subsection (a) of Section 66261.3 of Title 22 of the California Code of Regulations, or both.

(B) The treatment meets the following requirements, in addition to all other requirements of this section:

(i) The treatment complies with all applicable pretreatment requirements.

(ii) Neutralization occurs in elementary neutralization units, as defined in Section 66260.10 of Title 22 of the California Code of Regulations; wastes to be neutralized do not contain any more than 10 percent acid or base concentration by weight, or any other concentration limit which may be imposed by the department; and vessels and piping for neutralization are constructed of materials compatible with the range of temperatures and pH levels, and subject to appropriate pH temperature controls.

(iii) Treatment does not result in the emission of volatile hazardous waste constituents or toxic air contaminants.

(10) The hazardous waste treatment is carried out in a quality control or quality assurance laboratory at a facility that is not an offsite hazardous waste facility and the treatment activity otherwise meet the requirements of paragraph (1) of subdivision (a).

(11) Any wastestream technology combination certified by the department, pursuant to Section 25200.1.5, as suitable for authorization pursuant to this section, that operates pursuant to the conditions imposed on that certification.

(d) A generator conducting treatment pursuant to subdivision (a) or (c) shall meet all of the following conditions:

(1) The waste being treated is generated onsite, and a residual material from the treatment of a hazardous waste generated offsite is not a waste that has been generated onsite.

(2) The treatment does not require a hazardous waste facilities permit pursuant to the federal act.

(3) The generator prepares and maintains written operating instructions and a record of the dates, amounts, and types of waste treated.

(4) The generator prepares and maintains a written inspection schedule and log of inspections conducted.

(5) The records specified in paragraphs (3) and (4) are maintained onsite for a period of three years.

(6) The generator maintains adequate records to demonstrate that it is in compliance with all applicable pretreatment standards and with all applicable industrial waste discharge requirements issued by the agency operating the publicly owned treatment works into which the wastes are discharged.

(7) (A) The generator submits a notification to the department and to the local health officer or other local public officer authorized to implement this chapter pursuant to Section 25180 on or before April 1, 1993, or if the generator is commencing the first treatment of waste pursuant to this section, not more than 60 days before commencing treatment of that waste pursuant to this section. The notification shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to permit applications, shall be on a form prescribed by the department, and shall include, but not be limited to, all of the following information:

(i) The name, identification number, site address, mailing address, and telephone number of the generator to whom the conditional exemption applies.

(ii) A description of the physical characteristics and chemical composition of the hazardous waste to which the conditional exemption applies.

(iii) A description of the hazardous waste treatment activity to which the conditional exemption applies, including, but not limited to, the basis for determining that a hazardous waste permit is not required under the federal act.

(iv) A description of the characteristics and management of any treatment residuals.

(B) The development and publication of the notification form specified in subparagraph (A) is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the notification form.

(C) Any notification submitted pursuant to this paragraph shall supersede any prior notice of intent submitted by the same generator in order to obtain a permit-by-rule under the regulations adopted by the department. This subparagraph does not require the department to refund any fees paid for any application in conjunction with the submission of a notice of intent for a permit-by-rule.

(8) (A) Upon terminating operation of any treatment process or unit exempted pursuant to this section, the generator who conducted the treatment shall remove or decontaminate all waste residues, containment system components, soils, and other structures

or equipment contaminated with hazardous waste from the unit. The removal of the unit from services shall be conducted in a manner that does both of the following:

(i) Minimizes the need for further maintenance.

(ii) Eliminates the escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or waste decomposition products to the environment after treatment process is no longer in operation.

(B) Any owner or operator who permanently ceases operation of a treatment process or unit that is conditionally exempted pursuant to this section shall provide written notification to the department and to the local health officer or other local public officer designated by the director pursuant to Section 25180 upon completion of all activities required under this subdivision.

(9) The waste is managed in accordance with all applicable requirements for generators of hazardous waste under this chapter and the regulations adopted by the department pursuant to this chapter.

(10) The generator submits a fee in the amount required by Section 25205.14. The generator shall submit that fee within 30 days of the date that the fee is assessed by the State Board of Equalization, in the manner specified by Section 43152.10 of the Revenue and Taxation Code.

(11) Notwithstanding any other provision of law, the generator shall submit the fee required by Section 25205.14 for the 1993 reporting period to the department as part of, and at the same time as, the notification required pursuant to paragraph (7) of subdivision (d) that is due on April 1, 1993. Any notification not accompanied by payment of the fee is invalid and shall not result in a grant of conditional exemption.

(e) (1) Unless otherwise required by federal law, ancillary equipment for a tank or container treating hazardous wastes solely pursuant to this section, is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the ancillary equipment's integrity is attested to pursuant to Section 62265.191 of Title 22 of the California Code of Regulations every two years from the date that retrofitting requirements would otherwise apply.

(2) The Legislature hereby finds and declares that, in the case of underground, gravity-pressured sewer systems, integrity testing is often not feasible. Therefore, on or before June 30, 1994, the department shall, by regulation, determine the best feasible leak detection measures which are sufficient to ensure that underground gravity-pressured sewer systems, for which it is not feasible to conduct integrity testing, do not leak. On and after July 1, 1994, if it is not feasible for an operator's ancillary equipment, or a portion thereof, to undergo integrity testing, the operator is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the operator implements the best feasible leak detection measures that are determined to be sufficient by the department in those

regulations, and those leak detection measures do not reveal any leaks emanating from the operator's ancillary equipment. Any ancillary equipment found to leak shall be retrofitted by the operator to meet the full secondary containment standards of Section 66265.196 of Title 22 of the California Code of Regulations.

(f) Nothing in this section shall abridge any authority granted to the department by any other provision of law to impose any further restrictions or limitations upon facilities subject to this section, that the department determines to be necessary to protect human health and safety or the environment.

(g) A generator may contract with another party to provide onsite treatment in accordance with the permit exemption provisions of this section. Any person who performs onsite treatment in a transportable treatment unit pursuant to this subdivision shall comply with the standards set forth in this chapter for the same treatment units treating the same waste streams and shall be subject to any additional requirements for transportable treatment units that are imposed by the department by regulations adopted pursuant to this section. The additional requirements may include, but shall not be limited to, a waste analysis plan, site-specific notification, financial assurances for third-party liability, operating standards, records retention, and time limits for the operation of the transportable treatment unit at a particular site.

(h) A generator conducting activities which are exempt from this chapter pursuant to Section 66261.7 of Title 22 of the California Code of Regulations, as that section read on January 1, 1993, is not required to comply with this section.

CHAPTER 277

An act to amend Section 987.87 of the Military and Veterans Code, relating to veterans.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 987.87 of the Military and Veterans Code is amended to read:

987.87. (a) The department shall establish the actual interest rate to be paid. To this end, the department, by a two-thirds vote of California Veterans Board members and with the approval of the Veterans' Finance Committee of 1943, is empowered to establish a uniform rate of interest payable upon the amount remaining unpaid under any veteran's purchase contract executed on or after September 26, 1974. The board and the committee shall periodically, at least once each year, make a finding as to the rate of interest to

be charged, determined by a floating rate based upon the actual cost of general obligation bond and revenue bond sales, plus a certain percent for administrative costs to be determined annually by the board and committee, taking into consideration the current value of money, the solvency of the Veterans' Farm and Home Building Fund of 1943, and the interest paid on any participation contracts to which the interest of the department may be subject. The board and the committee may raise or lower the effective rate of interest payable under these contracts annually as they deem to be for the best interests of the department, as well as the contractholders, if in so doing this action is made applicable alike to any and all of these contracts. The interest rate shall not be raised so that the effective date of a higher rate of interest occurs more than once in any calendar year, unless the board and committee, by a two-thirds vote of the members of each, make a finding that an additional increase in the interest rate is necessary to enable the department to maintain the financial solvency of the fund or to meet its obligations to bondholders or purchasers. At least 90 days' advance written notice to the contractholders shall be given before any increase in the interest rate becomes effective.

(b) The total amount of any installment payment shall be raised or lowered to reflect any change in the effective rate of interest. The department may, however, adjust or postpone any installment payment for good cause pursuant to Section 987.71 and, for these purposes, good cause shall include a consideration of whether an increased installment payment would be excessively burdensome in light of a purchaser's financial circumstances. The department shall include notice of this provision in the 90 days' advance notice required under subdivision (a).

CHAPTER 278

An act relating to public utilities.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) The longstanding cornerstone of state and federal telecommunications policy is universal service, which requires that telephone service be affordable and ubiquitously available.

(b) Increasing competition in telecommunication services markets and newly emerging telecommunications technologies demand a critical reexamination of the definition, objectives, and subsidy support for universal telephone service.

(c) The Public Utilities Commission should initiate this

reexamination immediately, with policy guidelines from the Legislature and participation by all elements of California society. Universal service must be defined in a way that ensures all segments of California society have access to the technology that will allow them to enjoy the benefits of the information age and the information superhighway.

(d) California telecommunications policy recognizes that:

(1) We must ensure the widespread availability of high-quality telecommunications service to all Californians.

(2) Advanced telecommunications services should be made available as ubiquitously and economically as possible to California's citizens, institutions, and businesses.

(3) Consumers must be provided with sufficient information upon which to make informed choices among telecommunications providers.

SEC. 2. (a) The Public Utilities Commission shall, on or before February 1, 1995, issue an order initiating an investigation and open a proceeding to examine the current and future definitions of universal service in telecommunications. The proceedings shall include public hearings that encourage participation by a broad and diverse range of interests from all areas in the state, including, but not limited to, consumer groups, service providers, rural and urban users, small and large business representatives, representatives of ethnic groups, and state agencies such as the Trade and Commerce Agency and the State and Consumer Services Agency. The objectives of the proceeding shall be to do the following:

(1) Define the goals of universal service given the new technologies and increasingly competitive markets, with emphasis on the role of basic service in education, health care, and in the workplace.

(2) Delineate the subsidy support needed to maintain universal service in the new competitive market.

(3) Design and recommend equitable and broad based subsidy support for universal service in freely competitive markets.

(4) Develop a process to periodically review and revise the definition of universal service to reflect new technology and markets.

(5) Address the issues of "carrier of last resort" and "franchise obligations."

(b) The recommendations shall be consistent with the state policies for telecommunications in Section 709 of the Public Utilities Code, and with the following principles:

(1) Essential telecommunications services should be provided at affordable prices to all Californians regardless of linguistic, cultural, ethnic, physical, geographic, or income considerations.

(2) In order to avoid an "information rich" and "information poor" stratification, there must be an ongoing evaluation of which services are deemed essential and therefore a part of universal service.

(3) Any subsidy that may be required to ensure that universal service remains a viable reality must have a clearly stated purpose and scope, include a broad based and competitively neutral funding mechanism, and be imposed in a manner that clearly identifies the source of the subsidy.

(4) Public policy should provide incentives as needed to promote deployment of advanced telecommunications technology to all customer segments.

(5) Consumers should be able to have access to all the information needed in order for them to make timely and informed choices about telecommunications products and services, and how to best use them.

(6) Because of their economic and social impact, education, health care, community, and government institutions must be positioned to be early recipients of the benefits of the information age.

(7) All parties involved in providing services utilizing evolving public networks should adhere to the same guidelines regarding mutual interconnectivity and interoperability, common carriage, reliability, privacy, and security.

(c) The commission shall complete its investigation and report to the Legislature its findings and recommendations for legislative action with respect to subdivisions (a) and (b), no later than January 1, 1996.

CHAPTER 279

An act to amend Sections 7002 and 7003 of the Business and Professions Code, relating to contractors.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 7002 of the Business and Professions Code is amended to read:

7002. One member of the board shall be a general engineering contractor, two members shall be general building contractors, two members shall be specialty contractors, one member shall be a member of a labor organization representing the building trades, and seven members shall be public members, one of whom shall be an active local building official.

For the purposes of construing this article, the terms "general engineering contractor," "general building contractor," and "specialty contractor" shall have the meanings given in Article 4 (commencing with Section 7055) of this chapter.

Each contractor member of the board shall be of recognized

standing in his or her branch of the contracting business. Each member of the board shall be at least 30 years of age and of good character.

Each member of the board shall have been a citizen and resident of the State of California for at least five years next preceding his or her appointment.

SEC. 2. Section 7003 of the Business and Professions Code is amended to read:

7003. Except as otherwise provided, an appointment to fill a vacancy caused by the expiration of the term of office shall be for a term of four years and shall be filled, except for a vacancy in the term of a public member, by a member from the same branch of the contracting business as was the branch of the member whose term has expired. A vacancy in the term of a public member shall be filled by another public member. Each member shall hold office until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.

Vacancies occurring in the membership of the board for any cause shall be filled by appointment for the balance of the unexpired term.

No person shall serve as a member of the board for more than two consecutive terms.

The Governor shall appoint five of the public members, including the local building official, and the six members qualified as provided in Section 7002. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member.

CHAPTER 280

An act to amend Sections 2 and 5 of Chapter 909 of the Statutes of 1991, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 2 of Chapter 909 of the Statutes of 1991 is amended to read:

Sec. 2. (a) The Judicial Council may establish in one county in which the board of supervisors by resolution agrees to the participation by the county, a three-year pilot program which shall implement a day-fine system commencing on July 1, 1993, and ending on July 1, 1996. Any decrease in revenue attributable to the day-fine project shall not adversely impact the county's share of court-generated revenue. The court will closely monitor court-generated revenue and will notify the state immediately

regarding any decrease of funds paid to the state attributable to the day-fine project. In the event that the county's share of revenue decreases during the term of the pilot project, the state promises to restore and shall restore county revenues in the amount of the shortfall, but not exceeding thirty-five thousand dollars ($35,000), at the end of the year in which a shortfall occurs from any source the state deems appropriate. The state will not decrease any amount otherwise payable to a participant county under any other law or state-funded program due to the restoration of a shortfall under this section. Either the state or the county may discontinue the project if any decrease in funds has, in its judgment, a significant impact on revenues.

(b) Notwithstanding any other provision of law, if a person is convicted of a misdemeanor or a misdemeanor charged as an infraction within the discretion of the district attorney pursuant to subdivision (d) of Section 17 and Section 19.8 of the Penal Code and the offense is included as part of the day-fine project in the pilot county, that person shall be fined pursuant to this section unless the court finds that unusual circumstances exist to justify avoidance of a fine. The court shall state on the record the circumstances that, in the interest of justice, necessitate an alternative disposition. Any minimum fine shall be calculated pursuant to subdivision (e), and the maximum fine shall not exceed ten thousand dollars ($10,000) for each offense for which the defendant is convicted. Notwithstanding any other provision of law, the court may prohibit day-fine offenders from serving time in jail, performing community service, or any other alternative sentence in lieu of payment of the day fine. The court shall use a percentage formula for allocation of the fines to various funds, including those established by Sections 1463 and 1464 of the Penal Code. There shall not be any penalty assessments, but those funds to which penalty assessments are distributed shall be included in the percentage formula in proportion to that amount provided for under present law. This section shall not be applicable to infractions, except for the infractions described in this subdivision.

(c) In the pilot county, the presiding judge of the superior court, the presiding judge of the municipal court, and the other municipal court judges, or if there are more than three municipal court judges, then three municipal court judges appointed by the presiding judge, the district attorney, the public defender, and a member of the Judicial Council shall constitute a planning group to devise a set of scales of day-fine units for misdemeanors and misdemeanors charged as infractions pursuant to subdivision (b) ranked according to their gravity. Specific conduct of the offender, including prior offenses, may be included in establishing the scale. After ranking the crimes, each offense shall be assigned a presumptive number of day-fine units. Each offense shall also be assigned a mitigating and aggravating number of units. The number of units for an offense shall not exceed the maximum number of jail days permitted under the applicable code section for the offense. This planning group shall also

determine a daily allowance for each dependent.

(d) This section shall not apply to juvenile cases tried under the juvenile court law.

(e) When assessing a day fine, the court shall locate the conviction charge by the code section on the scale prepared under subdivision (c). The court shall use the presumptive units unless the court determines there are aggravating or mitigating factors. If there are aggravating or mitigating factors, the court may use the aggravating or mitigating units.

The net daily income of the offender is the reported family gross income divided by the period of time that income covers less one-third. For those offenders whose family gross income is equal to or lower than the federal minimum wage multiplied by 40 hours per week, a minimum fine shall be imposed. The net daily income figure or the minimum fine shall be reduced by the daily allowance for the number of dependents of the offender. The number of persons for whom an offender is financially responsible is the sum of the offender plus all other persons who derive support from his or her income. For an offender who is a dependent, the number includes the head of the household and each supported family member, including the offender.

The day fine for each offense for which there is a conviction is the product of the day-fine units times the net daily income adjusted for the number of dependents.

(f) The fine order shall be deemed a money judgment for the fine. The county agency in charge of collections shall enforce the judgment. If the agency determines that installment payments are necessary, the number of payments shall be as few as possible, and the total fine amount shall be collected in the shortest time possible. If the agency has to use the civil process of the court to collect the fine, they shall be awarded costs and attorney's fees. The agency shall closely monitor the offender's performance, and take immediate action for nonpayment. Additionally, if the convicted person is on probation and the fine is a condition of probation, the court may revoke probation for willful nonpayment.

(g) Notwithstanding any other provision of law, the court may order the production of income tax records or other income documents in order to determine net daily income. All financial information provided for the purpose of calculating net daily income shall be confidential and shall only be used to determine the amount of the day fine. Pursuant to subdivision (c) of Section 987 of the Penal Code, that information shall not be used for any other purpose, including, but not limited to, any criminal or civil proceeding, or as evidence in any other case.

SEC. 2. Section 5 of Chapter 909 of the Statutes of 1991 is amended to read:

Sec. 5. The Judicial Council shall report to the Legislature on October 1, 1996, regarding its evaluation of the pilot project and its identification of factors for legislative consideration in determining

whether to adopt a day-fine system in other courts. This act shall remain in effect only until July 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1997, deletes or extends that date.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to avoid a lapse in the operative date of the day-fine pilot project provisions, it is necessary for this act to take effect immediately.

CHAPTER 281

An act to amend Section 33681.5 of the Health and Safety Code, relating to local agencies, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 33681.5 of the Health and Safety Code is amended to read:

33681.5. (a) (1) During each of the 1993–94 and 1994–95 fiscal years, a redevelopment agency shall remit prior to May 10 an amount equal to the amount determined for that agency pursuant to subparagraph (D) of paragraph (2) to the county auditor for deposit in the Educational Revenue Augmentation Fund created pursuant to Section 97.03 of the Revenue and Taxation Code.

(2) For each of the 1993–94 and 1994–95 fiscal years, on or before October 1, the Director of Finance shall do each of the following:

(A) Determine the net tax increment apportioned to each agency pursuant to Section 33670, excluding any amounts apportioned to affected taxing agencies pursuant to Section 33401 or 33676, in the 1990–91 fiscal year.

(B) Determine the net tax increment apportioned to all agencies pursuant to Section 33670, excluding any amounts apportioned to affected taxing agencies pursuant to Section 33401 or 33676, in the 1990–91 fiscal year.

(C) Determine a percentage factor by dividing sixty-five million dollars ($65,000,000) by the amount determined pursuant to subparagraph (B).

(D) Determine an amount for each agency by multiplying the amount determined pursuant to subparagraph (A) by the percentage factor determined pursuant to subparagraph (C).

(E) Notify each agency and each legislative body of the amount

determined pursuant to subparagraph (D).

(F) Notify each county auditor of the amounts determined pursuant to subparagraph (D) for each agency in his or her county.

(b) (1) Notwithstanding Sections 33334.2, 33334.3, and 33334.6, and any other provision of law, in order to make the full allocation required by this section, an agency may borrow up to 50 percent of the amount required to be allocated to the Low- and Moderate-Income Housing Fund pursuant to Sections 33334.2, 33334.3, and 33334.6 during the 1993–94 and 1994–95 fiscal years, unless executed contracts exist that would be impaired if the agency reduced the amount allocated to the Low- and Moderate-Income Housing Fund pursuant to the authority of this section.

(2) As a condition of borrowing pursuant to this subdivision, an agency shall make a finding that there are insufficient other moneys to meet the requirements of subdivision (a). Funds borrowed pursuant to this subdivision shall be repaid in full on or before June 30, 2004.

(c) In order to make the allocation required by this section, an agency may use any funds that are legally available and not legally obligated for other uses, including, but not limited to, reserve funds, proceeds of land sales, proceeds of bonds or other indebtedness, lease revenues, interest, and other earned income. No moneys held in a low- and moderate-income fund as of July 1 of that fiscal year may be used for this purpose.

(d) The legislative body shall by March 1 report to the county auditor as to how the agency intends to fund the allocation required by this section.

(e) The allocation obligations imposed by this section, including amounts owed, if any, created under this section, are hereby declared to be an indebtedness of the redevelopment project to which they relate, payable from taxes allocated to the agency pursuant to Section 33670, and shall constitute an indebtedness of the agency with respect to the redevelopment project until paid in full.

(f) It is the intent of the Legislature, in enacting this section, that these allocations directly or indirectly assist in the financing or refinancing, in whole or in part, of the community's redevelopment projects pursuant to Section 16 of Article XVI of the California Constitution.

(g) For the purpose of making the determinations required by subdivision (a), the Director of Finance shall use those amounts reported as the "net tax increment to agency" for all agencies and for each agency in Table 6 of the 1990–91 fiscal year Controller's Annual Report on Financial Transactions Concerning Community Redevelopment Agencies of California.

(h) In the event that revised reports have been accepted by the Controller on or before January 1, 1994, the Director of Finance shall use appropriate data that has been certified by the Controller for the purpose of making the determinations required by subdivision (a). If this subdivision requires the Director of Finance to revise the

determinations for the 1993–94 and 1994–95 fiscal years, the director shall not make those changes for the 1993–94 fiscal year, but instead shall apply the revised determinations for both fiscal years to the 1994–95 fiscal year.

(i) This section shall be operative only until July 1, 2004. This section shall remain in effect only until January 1, 2005, and as of that date is repealed.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to alleviate undue fiscal hardship to affected redevelopment agencies, including the Redevelopment Agency of the City of Norwalk, it is necessary that this act take effect immediately.

CHAPTER 282

An act to amend Sections 8505.1, 8505.14, 8505.15, 8506.1, 8641, and 8663 of the Business and Professions Code, relating to structural pest control.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 8505.1 of the Business and Professions Code is amended to read:

8505.1. (a) Except as provided in subdivisions (b) and (c), for the purpose of this act, "fumigation" shall be defined as the use within an enclosed space for the destruction of plant or animal life, a substance having a vapor pressure greater than 5 millimeters of mercury at 25 degrees centigrade when the substance is labeled for those purposes.

The following is a list of lethal fumigants:

(1) Methyl bromide.
(2) Sulfur dioxide.
(3) Propylene oxide.
(4) Sulfuryl fluoride.
(5) Aluminum phosphide.

The board may adopt, and may as necessary amend, by regulation, a list of fumigants.

(b) For the purpose of this act, "warning agent" shall be any agent used in combination with any fumigant that lacks warning properties.

The following is a warning agent:

Chloropicrin.

The board may adopt, and may as necessary amend, by regulation, a list of warning agents.

(c) For the purpose of this act "simple asphyxiants" shall not be deemed to be fumigants.

The following is a list of simple asphyxiants:

(1) Liquid nitrogen.

(2) Carbon dioxide.

The board may adopt, and may as necessary amend, by regulation, a list of simple asphyxiants.

SEC. 2. Section 8505.14 of the Business and Professions Code is amended to read:

8505.14. "Fumigator" means any individual licensed by the board as a structural pest control operator or as a structural pest control field representative in the branch of pest control which includes fumigation as set forth in Section 8560.

SEC. 3. Section 8505.15 of the Business and Professions Code is amended to read:

8505.15. Two effective masks of a type approved by the National Institute of Occupational Safety and Health for protection against the fumigant being used shall be made readily available by the registered company to a fumigating crew whenever a fumigant is introduced into or removed from a structure.

SEC. 4. Section 8506.1 of the Business and Professions Code is amended to read:

8506.1. A "registered company" is any sole proprietorship, partnership, corporation, or other organization or any combination thereof which is registered with the Structural Pest Control Board to engage in the practice of structural pest control.

A registered company may secure structural pest control work, submit bids, or otherwise contract for pest control work. A registered company may hire licensed field representatives and licensed operators to identify infestations or infections, make inspections, and represent the company in the securing of pest control work. A registered company may hire or employ individuals who are not licensed under this chapter to perform work on contracts covering wood-destroying organisms only after an operator or field representative has fully completed the negotiation or signing of the contract covering a given job.

A registered company may hire and use individuals who are not licensed under this chapter on service contracts already established.

SEC. 5. Section 8641 of the Business and Professions Code is amended to read:

8641. Failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for wood-destroying pests or organisms, or furnishing a notice of work completed prior to the completion of the work specified in the contract, is a ground for disciplinary action.

SEC. 6. Section 8663 of the Business and Professions Code is

amended to read:

8663. (a) This section only applies to work conducted under a Branch 1 license.

(b) The board or county agricultural commissioners, when acting pursuant to Section 8616.4, may levy a fine of up to five hundred dollars ($500) against a registered company acting as a prime contractor for any major violation committed by any licensee with whom the prime contractor has subcontracted if, before that violation occurred, the prime contractor had been notified by certified mail, return receipt requested, of more than two major violations committed by the subcontractor within 12 consecutive months.

Fines collected pursuant to this section shall be paid to the Education and Enforcement Account in the Structural Pest Control Education and Enforcement Fund.

(c) For purposes of this section, "major violation" means a violation of any of the following provisions of this code or of the California Code of Regulations that poses a serious hazard to humans:

(1) A violation of subdivision (a) or (b) of Section 1970.4 of Title 16 of, or Section 6454 or 6455 of Title 3 of, the California Code of Regulations, or a violation of Section 8505.5.

(2) Any violation of the structural pest control law that results in a serious injury to any person.

(3) A violation of Section 8505.2 or 8505.3, relating to direct and personal supervision.

(4) A violation of Section 8505.7, relating to vacating and securing structures.

(5) A violation of subdivision (a) of Section 6780 of Title 3 of the California Code of Regulations.

(6) A violation of subparagraph (B) of paragraph (1) of subdivision (c) of, or subdivision (e) of, Section 6454 of, or a violation of subparagraph (C) or clause (i) of subparagraph (D) of paragraph (1) of subdivision (b) of Section 6455 of, or a violation of subdivision (c) of Section 6455 of, Title 3 of the California Code of Regulations.

(7) A violation of Section 8505.12, relating to warning agents.

(8) A violation of Section 8505.9 or 8505.10, relating to warning signs.

(d) A copy of a notice of violation issued for any violation committed by a subcontractor shall be sent by certified mail to the prime contractor by the issuing authority within 15 days from the date the violation was committed.

(e) Notwithstanding subdivision (b), a prime contractor may be fined for a subcontractor's first violation for failing to have a signed factsheet on the premises being treated, or if the subcontractor fails to provide advance notice of a treatment to the occupants of the premises being treated.

CHAPTER 283

An act to amend Sections 26625.2, 26625.3, 26625.4, 26625.5, 26625.6, 26625.7, 26625.8, and 26625.9 of the Government Code, relating to county officers.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 26625.2 of the Government Code is amended to read:

26625.2. There is a court security bureau within the Contra Costa County Sheriff's Department to serve the superior and municipal courts. The relationship between the sheriff's department and the court security bureau shall be similar to that which exists between the Sheriff's Department of Contra Costa County and certain cities in the county that contract for police services. The court security bureau shall maintain a branch office in each municipal court district with the exception of the Walnut Creek-Danville Judicial District.

SEC. 2. Section 26625.3 of the Government Code is amended to read:

26625.3. There is a Court Security Oversight Committee consisting of three municipal court judges and two superior court judges in even-numbered years and three superior court judges and two municipal court judges in odd-numbered years elected annually by a majority of their respective benches. The duties of the committee shall be those prescribed by this article, and include, but are not limited to, the following:

(a) To approve all transfers out of and into the court security bureau.

(b) To approve staffing levels and the recommended budget prior to submission to the board of supervisors.

(c) To approve security measures and plans prepared by the sheriff, through the court security bureau commander.

(d) Notwithstanding any other provisions of law, the sheriff shall provide bailiffing, court security, and prisoner holding in the Superior Court and Municipal Courts of Contra Costa County.

SEC. 3. Section 26625.4 of the Government Code is amended to read:

26625.4. (a) The sheriff shall be the appointing authority for all court security bureau positions and employees.

(b) The incumbent marshal of the Contra Costa County Municipal Court shall become the assistant sheriff (exempt) of the court security bureau upon the operative date of this section and may not be removed except by a four-fifths majority vote of the Court Security Oversight Committee. He or she shall hold the permanent rank of captain in the merit system. Whenever the salary of assistant

sheriff is adjusted by the board of supervisors, the salary of assistant sheriff, court security bureau, shall be adjusted in the same amount with the same effective date.

(c) The selection, appointment, and removal of subsequent management heads of the court security bureau shall be made by a majority vote of the superior court judges of Contra Costa County and majority vote of the municipal court judges of Contra Costa County from a list of qualified lieutenants submitted by the sheriff.

(d) The two incumbent assistant marshals in the marshal's office shall become marshals, court security bureau, in the sheriff's department and assigned to the court security bureau upon the operative date of this section and may not be removed except by a four-fifths majority vote of the Court Security Oversight Committee. They shall be allocated to a salary level which is 67 levels on the C5 salary schedule above that of lieutenant in the service of Contra Costa County. Whenever the salary of lieutenant is adjusted by the board of supervisors, the salary of these two individuals shall be adjusted in the same percentage or levels with the same effective date.

SEC. 4. Section 26625.5 of the Government Code is amended to read:

26625.5. (a) All personnel of the marshal's office who are assigned to court services on the operative date of this section shall become members of the court security bureau at their existing salaries and benefits. Permanent employees presently holding the rank of deputy or sergeant, respectively, in the marshal's office shall become deputy sheriffs or sheriff's sergeants upon the operative date of this section.

(b) Sworn personnel described in subdivision (a) may be transferred to another position in the sheriff's office at the same or an equivalent classification, but shall not be involuntarily transferred out of court services.

(c) Permanent employees of the sheriff's office assigned to court services on the operative date of this section and permanent employees of the marshal's office on the operative date of this section shall be deemed qualified for employment and retention in the Sheriff's Department of Contra Costa County. Probationary employees of the sheriff's department assigned to court services on the operative date of this section and probationary employees of the marshal's office on the operative date of this section shall retain their probationary status and rights, and shall not be required to start a new probationary period.

(d) For personnel of the sheriff's office assigned to court services on the operative date of this section and personnel of the marshal's office on the operative date of this section, all county service shall be counted toward county seniority, and all time spent in the same classification, and all time spent in the equivalent or higher classification shall be counted toward classification seniority. All county seniority shall be credited as departmental seniority. For

layoff and displacement purposes all covered service in the sheriff's department and marshal's office shall be counted equally, and the County's Personnel Management Regulations and other governing county ordinances and resolutions shall determine the class, county, and departmental seniority dates, the seniority and layoff order, and displacement rights of all employees.

(e) No employee of the sheriff's office assigned to court services on the operative date of this section or employee of the marshal's office on the operative date of this section shall lose peace officer status or be demoted or otherwise adversely affected by the consolidation of court services accomplished by this section. Peace Officer Standards and Training certificates held on the operative date of this section by employees of the Marshal's Department of Contra Costa County and the Sheriff's Department of Contra Costa County shall be considered the same for purposes of this section.

SEC. 5. Section 26625.6 of the Government Code is amended to read:

26625.6. (a) Notwithstanding any other provision of this article, the sheriff through the court security bureau commander shall make all transfers within the court security bureau consistent with existing personnel policies of the sheriff, memoranda of understanding, if any, and other county personnel management rules and regulations.

(b) A deputy marshal or deputy marshal sergeant on the operative date of this section who transfers out of the court security bureau to another division of the sheriff's office and subsequently fails to meet the employment standards of the other division may be transferred back to the court security bureau at the sole discretion of the sheriff.

SEC. 6. Section 26625.7 of the Government Code is amended to read:

26625.7. An employee of the sheriff's office who desires to transfer into the office of court services shall make application through the appropriate division to the court security bureau commander. That employee, if approved by the Court Security Oversight Committee for transfer to the court security bureau, shall execute an agreement to serve in the court security bureau for a minimum term of three years.

SEC. 7. Section 26625.8 of the Government Code is amended to read:

26625.8. Since the sheriff's department previously required each of its deputies to serve on its jail detention staff, and a deputy was permitted to credit time spent as a superior court bailiff prior to January 5, 1987, in lieu of all or part of this jail requirement, employees of the marshal's office on the operative date of this section shall be required to serve on the jail staff only if they transfer out of the court security bureau. In addition, those employees shall receive day-for-day credit on the jail requirement for time spent prior to the operative date of this section in bailiff-related services in the municipal court to the same extent as sheriff's deputies receive such

credit for time spent in bailiff-related services in the superior court. The purpose of this section is to provide equality of treatment for those who have provided equivalent service in the municipal and superior courts.

SEC. 8. Section 26625.9 of the Government Code is amended to read:

26625.9. All sworn permanent employees subsequently assigned to the court security bureau shall be required to meet those requirements of the California Commission on Peace Officer Standards and Training imposed on all marshal's departments in California.

CHAPTER 284

An act to amend Sections 10351 and 10364 of the Public Contract Code, relating to state procurement.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 10351 of the Public Contract Code is amended to read:

10351. (a) The department shall exempt from its approval contracts under seventy-five thousand dollars ($75,000) that any state agency awards if the agency does all of the following:

(1) Designates an agency officer as responsible and directly accountable for the agency's contracting program.

(2) Establishes written policies and procedures and a management system that will ensure the agency's contracting activities comply with applicable provisions of law and regulations and that it has demonstrated the ability to carry out these policies and procedures and to implement the management system.

(3) Establishes a plan for ensuring that contracting personnel are adequately trained in contract administration and contract management.

(4) Conducts an audit every two years of the contracting program and reports to the department as it may require.

(5) Establishes procedures for reporting to the department and the Legislature on such contracts as the Legislature may require in the Budget Act.

(b) Any state agency may request the department to exempt from its approval classes or types of contracts under this section. When the department receives such a request but refuses to grant the exemption, it shall state in writing the reasons for the refusal. It is the intent of the Legislature that the department shall actively implement the provisions of this section and shall exempt from its

approval as wide a range of classes or types of contracts as is consistent with proper administrative controls and the best interests of the state.

SEC. 2. Section 10364 of the Public Contract Code is amended to read:

10364. (a) The department shall exempt from its approval consulting services contracts under seventy-five thousand dollars ($75,000) that any state agency awards if the agency does all of the following:

(1) Designates an agency officer as responsible and directly accountable for the agency's contracting program.

(2) Establishes written policies and procedures and a management system that will ensure the agency's contracting activities comply with applicable provisions of law and regulations and that it has demonstrated the ability to carry out these policies and procedures and to implement the management system.

(3) Establishes a plan for ensuring that contracting personnel are adequately trained in contract administration and contract management.

(4) Conducts an audit every two years of the contracting program and reports to the department as it may require.

(5) Establishes procedures for reporting to the department and the Legislature on such contracts as the Legislature may require in the Budget Act.

(b) Any state agency may request the department to exempt from its approval classes or types of contracts under this section. When the department receives such a request but refuses to grant the exemption, it shall state in writing the reasons for the refusal. It is the intent of the Legislature that the department shall actively implement the provisions of this section and shall exempt from its approval as wide a range of classes or types of contracts as is consistent with proper administrative controls and the best interests of the state.

CHAPTER 285

An act to amend Sections 4600.5, 5173, 5177, 5179, 5182, and 5188 of the Labor Code, relating to workers' compensation.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 4600.5 of the Labor Code is amended to read:

4600.5. (a) Any health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, a disability insurer

licensed by the Department of Insurance, or any entity, including, but not limited to, medical groups, workers' compensation insurers, and third-party administrators authorized as a workers' compensation health care provider organization by the Commissioner of Corporations, may make written application to the administrative director to become certified as a health care organization to provide health care to injured employees for injuries and diseases compensable under this article.

(b) Each application for certification shall be accompanied by a reasonable fee prescribed by the administrative director. A certificate is valid for such period as the director may prescribe unless sooner revoked or suspended.

(c) If the health care organization is a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, the administrative director shall certify the plan to provide health care pursuant to Section 4600.3 if the director finds that the plan is in good standing with the Department of Corporations and meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records prepared and submitted to the Department of Corporations in compliance with the Knox-Keene Health Care Service Plan Act, relating to financial solvency, provider accessibility, peer review, utilization review, and quality assurance, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees in compliance with the requirements of this code.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to Sections 1370 and 1370.1 of the Health and Safety Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article,

including, but not limited to, a written patient grievance policy.

(d) If the health care organization is a disability insurer licensed by the Department of Insurance, the administrative director shall certify the plan to provide health care pursuant to Section 4600.3 if the director finds that the plan is in good standing with the Department of Insurance and in compliance with subdivision (d) of Section 10133 and Section 10133.5 of the Insurance Code, and meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records prepared and submitted to the Department of Insurance in compliance with the Insurance Code relating to financial solvency, provider accessibility, peer review, utilization review, and quality assurance, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees consistent with the intent of this article.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to subdivision (d) of Section 10133 of the Insurance Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(e) If the health care organization is a workers' compensation health care provider organization authorized by the Department of Corporations, the administrative director shall certify the plan to provide health care pursuant to Section 4600.3 if the director finds that the plan is in good standing with the Department of Corporations, and it meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace

health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records prepared and submitted to the Department of Corporations in compliance with Section 54 and Part 3.2 (commencing with Section 5150) relating to financial solvency, provider accessibility, peer review, utilization review, and quality assurance, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees consistent with the intent of this article.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to subdivision (d) of Section 10133 of the Insurance Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(f) The provisions of this section shall not affect the confidentiality or admission in evidence of a claimant's medical treatment records.

(g) Charges for services arranged for or provided by health care service plans certified by this section and which are paid on a capitated basis shall not be subject to the schedules adopted by the administrative director pursuant to Section 5307.1.

(h) Nothing in this section shall be construed to expand or constrict any requirements imposed by law on a health care service plan or insurer when operating as other than a health care organization pursuant to this section.

(i) In consultation with interested parties, including the Department of Corporations and the Department of Insurance, the administrative director shall adopt rules necessary to carry out this section.

(j) The administrative director shall refuse to certify or may revoke or suspend the certification of any health care organization under this section if the director finds that:

(1) The plan for providing medical treatment fails to meet the requirements of this section.

(2) A health care service plan licensed by the Department of

Corporations, a workers' compensation health care provider organization authorized by the Department of Corporations, or a carrier licensed by the Department of Insurance is not in good standing with its licensing agency.

(3) Services under the plan are not being provided in accordance with the terms of a certified plan.

(k) (1) When an injured employee requests chiropractic treatment for work-related injuries, the health care organization shall provide the injured worker with access to the services of a chiropractor pursuant to guidelines for chiropractic care established by paragraph (2). Within five working days of the employee's request to see a chiropractor, the health care organization and any person or entity who directs the kind or manner of health care services for the plan shall refer an injured employee to an affiliated chiropractor for work-related injuries that are within the guidelines for chiropractic care established by paragraph (2). Chiropractic care rendered in accordance with guidelines for chiropractic care established pursuant to paragraph (2) shall be provided by duly licensed chiropractors affiliated with the plan.

(2) The health care organization shall establish guidelines for chiropractic care in consultation with affiliated chiropractors who are participants in the health care organization's utilization review process for chiropractic care, which may include qualified medical evaluators knowledgeable in the treatment of chiropractic conditions. The guidelines for chiropractic care shall, at a minimum, explicitly require the referral of any injured employee who so requests to an affiliated chiropractor for the evaluation or treatment, or both of neuromusculoskeletal conditions.

(3) Whenever a dispute concerning the appropriateness or necessity of chiropractic care for work-related injuries arises, the dispute shall be resolved by the health care organization's utilization review process for chiropractic care in accordance with the health care organization's guidelines for chiropractic care established by paragraph (2).

Chiropractic utilization review for work-related injuries shall be conducted in accordance with the health care organization's approved quality assurance standards and utilization review process for chiropractic care. Chiropractors affiliated with the plan shall have access to the health care organization's provider appeals process and, in the case of chiropractic care for work-related injuries, the review shall include review by a chiropractor affiliated with the health care organization, as determined by the health care organization.

(4) The health care organization shall inform employees of the procedures for processing and resolving grievances, including those related to chiropractic care, including the location and telephone number where grievances may be submitted.

(5) All guidelines for chiropractic care and utilization review shall be consistent with the standards of this code that require care to cure or relieve the effects of the industrial injury.

SEC. 2. Section 5173 of the Labor Code is amended to read:

5173. (a) The commissioner shall require the use by each organization of disclosure forms or materials containing such information regarding the health care and terms of the workers' compensation health care contract as the commissioner may require, so as to afford the public, employers, and employees with a full and fair disclosure of the provisions of the contract in readily understood language and in a clearly organized manner. The commissioner may require that the materials be presented in a reasonably uniform manner so as to facilitate comparisons between contracts of the same or other types of organizations. The disclosure form shall describe the health care that is required by the Director of the Department of Industrial Relations under Sections 4600.3 and 4600.5, and shall provide that all information be in concise and specific terms, relative to the contract, together with such additional information as may be required by the commissioner, in connection with the organization or contract.

(b) All organizations, solicitors, and representatives of a workers' compensation health care provider organization shall, when presenting any contract for examination or sale to a prospective employee, provide the employee with a properly completed disclosure form, as prescribed by the commissioner pursuant to this section for each contract so examined or sold.

(c) In addition to the other disclosures required by this section, every organization and any agent or employee of the organization shall, when representing an organization for examination or sale to any individual purchaser or the representative of a group consisting of 25 or fewer individuals, disclose in writing the ratio of premium costs to health care paid for contracts with individuals and with groups of the same or similar size for the organization's preceding fiscal year. An organization may report that information by geographic area, provided the organization identifies the geographic area and reports information applicable to that geographic area.

SEC. 3. Section 5177 of the Labor Code is amended to read:

5177. Each organization shall meet the following requirements:

(a) All facilities located in this state, including, but not limited to, clinics, hospitals, and skilled nursing facilities, to be utilized by the organization shall be licensed by the State Department of Health Services, if that licensure is required by law. Facilities not located in this state shall conform to all licensing and other requirements of the jurisdiction in which they are located.

(b) All personnel employed by or under contract to the organization shall be licensed or certified by their respective board or agency, where that licensure or certification is required by law.

(c) All equipment required to be licensed or registered by law shall be so licensed or registered and the operating personnel for that equipment shall be licensed or certified as required by law.

(d) The organization shall furnish services in a manner providing continuity of care and ready referral of patients to other providers

at such times as may be appropriate consistent with good professional practice.

(e) All health care shall be readily available at reasonable times to all employees. To the extent feasible, the organization shall make all health care readily accessible to all employees.

(f) The organization shall employ and utilize allied health manpower for the furnishing of health care to the extent permitted by law and consistent with good health care practice.

(g) The organization shall have the organizational and administrative capacity to provide services to employees. The organization shall be able to demonstrate to the department that health care decisions are rendered by qualified providers, unhindered by fiscal and administrative management.

(h) All contracts with employers, insurers of employers, and self-insured employers and all contracts with providers, and other persons furnishing services, equipment, or facilities to or in connection with the workers' compensation health care provider organization, shall be fair, reasonable, and consistent with the objectives of this part.

(i) Each organization shall provide to employees all workers' compensation health care required by this code. The commissioner shall not determine the scope of workers' compensation health care to be offered by an organization.

SEC. 4. Section 5179 of the Labor Code is amended to read:

5179. Every organization shall establish procedures in accordance with department regulations for continuously reviewing the quality of care, performance of medical personnel, utilization of services and facilities, and costs. Notwithstanding any other provision of law, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person who participates in quality of care or utilization reviews by peer review committees which are composed chiefly of physicians, as defined by Section 3209.3, for any act performed during the reviews if the person acts without malice, has made a reasonable effort to obtain the facts of the matter, and believes that the action taken is warranted by the facts, and neither the proceedings nor the records of the reviews shall be subject to discovery, nor shall any person in attendance at the reviews be required to testify as to what transpired thereat. Disclosure of the proceedings or records to the governing body of an organization or to any person or entity designated by the organization to review activities of the committees shall not alter the status of the records or of the proceedings as privileged communications.

The above prohibition relating to discovery or testimony shall not apply to the statements made by any person in attendance at a review who is a party to an action or proceeding the subject matter of which was reviewed, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the

policy limits, or to the commissioner in conducting surveys pursuant to Section 5186.

This section shall not be construed to confer immunity from liability on any workers' compensation health care provider organization. In any case in which, but for the enactment of the preceding provisions of this section, a cause of action would arise against an organization, the cause of action shall exist notwithstanding the provisions of this section.

SEC. 5. Section 5182 of the Labor Code is amended to read:

5182. (a) No organization shall conduct any activity regulated by this part in contravention of such rules and regulations as the commissioner may prescribe as necessary or appropriate in the public interest or for the protection of organizations and employees to provide safeguards with respect to the requirements of the preceding section.

(b) Each solicitor and solicitor firm shall handle funds received for the account of workers' compensation health care provider organizations, subscribers, or groups in accordance with such rules as the commissioner may adopt pursuant to this subdivision.

SEC. 6. Section 5188 of the Labor Code is amended to read:

5188. (a) The commissioner shall conduct an examination of the fiscal and administrative affairs of any organization, and each person with whom the organization has made arrangements for administrative, management, or financial services, as often as deemed necessary to protect the interest of employees, but not less frequently than once every five years.

(b) The expense of conducting any additional or nonroutine examinations pursuant to this section, and the expense of conducting any additional or nonroutine medical surveys pursuant to Section 5186 shall be charged against the organization being examined or surveyed. The amount shall include the actual salaries or compensation paid to the persons making the examination or survey, the expenses incurred in the course thereof, and overhead costs in connection therewith as fixed by the commissioner. In determining the cost of examinations or surveys, the commissioner may use the estimated average hourly cost for all persons performing examinations or surveys of workers' compensation health care provider organizations for the fiscal year. The amount charged shall be remitted by the organization to the commissioner. If recovery of these costs cannot be made from the organization, these costs may be added to, but subject to the limitation of, the assessment provided for in subdivision (b) of Section 5166.

(c) Reports of all examinations shall be open to public inspection, except that no examination shall be made public, unless the organization has had an opportunity to review the examination report and file a statement or response within 30 days, to be attached to the report. Deficiencies shall not be made public if they are corrected within 30 days of the date that the organization was notified of the deficiency.

(d) Upon receipt of the written request of the Director of the Department of Industrial Relations, the commissioner may, consistent with Section 6254.5 of the Government Code, permit the Department of Industrial Relations to review the organization's examination report.

CHAPTER 286

An act to amend Sections 6010.65 and 24384 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 6010.65 of the Revenue and Taxation Code is amended to read:

6010.65. (a) "Sale" and "purchase," for purposes of this part, do not include any transfer of title to, nor any lease of, tangible personal property pursuant to an acquisition sale and leaseback. An acquisition sale and leaseback is a sale by a person and leaseback to that person of tangible personal property where both of the following conditions are satisfied:

(1) That person has paid sales tax reimbursement or use tax with respect to that person's purchase of the property.

(2) The acquisition sale and leaseback is consummated within 90 days of that person's first functional use of the property.

(b) "Sale" and "purchase" include, for purposes of this part, the transfer of title to a lessee upon termination of an acquisition sale and leaseback.

(c) This section shall apply to acquisition sale and leaseback arrangements executed on or after the operative date of this section.

SEC. 2. Section 24384 of the Revenue and Taxation Code is amended to read:

24384. (a) There shall be allowed as a deduction the amount of net interest received by the taxpayer in payment of indebtedness of either of the following:

(1) A qualified business (as defined in Section 7082 of the Government Code).

(2) A person or entity engaged in trade or business located in an enterprise zone (as defined in Section 7073 of the Government Code).

(b) No deduction shall be allowed under this section unless at the time the indebtedness is incurred each of the following requirements are met:

(1) The qualified business is located solely within a program area

(as defined in Section 7082 of the Government Code), or the trade or business is located solely within an enterprise zone (as defined in Section 7073 of the Government Code).

(2) The indebtedness is incurred solely in connection with activity within the program area or enterprise zone.

(3) The taxpayer has no equity or other ownership interest in the debtor.

SEC. 3. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

CHAPTER 287

An act to amend Section 11000.7 of the Government Code, relating to public agencies.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 11000.7 of the Government Code is amended to read:

11000.7. Notwithstanding any other provision of law, every state agency shall establish the license periods and renewal dates for all licenses issued by the agencies in the manner as best to distribute the renewal work of all agencies throughout each year and permit the most efficient and economical use of personnel and equipment. To the extent practicable, provision shall be made for the proration or other adjustment of fees in the manner that no person shall be required to pay a greater or lesser fee than he or she would have been required to pay if the change in license periods or renewal dates had not occurred.

Nothing in this section shall authorize any state agency to vary the period of any license which is issued other than as authorized by law.

CHAPTER 288

An act to amend Section 340.1 of the Code of Civil Procedure, relating to commencement of actions.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 340.1 of the Code of Civil Procedure is amended to read:

340.1. (a) In any civil action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever period expires later.

(b) "Childhood sexual abuse" as used in this section includes any act committed by the defendant against the plaintiff that occurred when the plaintiff was under the age of 18 years and that would have been proscribed by Section 266j of the Penal Code; Section 285 of the Penal Code; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of Section 286 of the Penal Code; subdivision (a) or (b) of Section 288 of the Penal Code; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of Section 288a of the Penal Code; subdivision (h), (i), or (j) of Section 289 of the Penal Code; Section 647.6 of the Penal Code; or any prior laws of this state of similar effect at the time the act was committed.

(c) Nothing in this section shall be construed to alter the otherwise applicable burden of proof, as defined in Section 115 of the Evidence Code, that a plaintiff has in a civil action subject to this section.

(d) Every plaintiff 26 years of age or older at the time the action is filed shall file certificates of merit as specified in subdivision (e).

(e) Certificates of merit shall be executed by the attorney for the plaintiff and by a licensed mental health practitioner selected by the plaintiff declaring, respectively, as follows, setting forth the facts which support the declaration:

(1) That the attorney has reviewed the facts of the case, that the attorney has consulted with at least one mental health practitioner who is licensed to practice and practices in this state and who the attorney reasonably believes is knowledgeable of the relevant facts and issues involved in the particular action, and that the attorney has concluded on the basis of that review and consultation that there is reasonable and meritorious cause for the filing of the action. The person consulted may not be a party to the litigation.

(2) That the mental health practitioner consulted is licensed to

practice and practices in this state and is not a party to the action, that the practitioner is not treating and has not treated the plaintiff, and that the practitioner has interviewed the plaintiff and is knowledgeable of the relevant facts and issues involved in the particular action, and has concluded, on the basis of his or her knowledge of the facts and issues, that in his or her professional opinion there is a reasonable basis to believe that the plaintiff had been subject to childhood sexual abuse.

(3) That the attorney was unable to obtain the consultation required by paragraph (1) because a statute of limitations would impair the action and that the certificates required by paragraphs (1) and (2) could not be obtained before the impairment of the action. If a certificate is executed pursuant to this paragraph, the certificates required by paragraphs (1) and (2) shall be filed within 60 days after filing the complaint.

(f) Where certificates are required pursuant to subdivision (d), separate certificates shall be filed for each defendant named in the complaint.

(g) A complaint subject to subdivision (d) may not be served upon the defendant or defendants until the court has reviewed the certificates of merit filed pursuant to subdivision (e) and has found, in camera, based solely on those certificates of merit, that there is reasonable and meritorious cause for the filing of the action. At that time, the complaint may be served upon the defendant or defendants. The duty to serve the defendant or defendants with process shall not attach until that time.

(h) A violation of this section may constitute unprofessional conduct and may be the grounds for discipline against the attorney.

(i) The failure to file certificates in accordance with this section shall be grounds for a demurrer pursuant to Section 430.10 or a motion to strike pursuant to Section 435.

(j) In any action subject to subdivision (d), the defendant or defendants may not be named except by "Doe" designation in any pleadings or papers filed in the action until there has been a showing of corroborative fact as to the charging allegations against any defendant alleged to have committed an act or acts of childhood sexual abuse against the plaintiff.

(k) At any time after the action is filed, plaintiff may apply to the court for permission to amend the complaint to substitute the name of the defendant or defendants for the fictitious designation, as follows:

(1) The application shall be accompanied by a certificate of corroborative fact executed by the attorney for the plaintiff. The certificate shall declare that the attorney has discovered one or more facts corroborative of one or more of the charging allegations against a defendant or defendants, and shall set forth in clear and concise terms the nature and substance of the corroborative fact. If the corroborative fact is evidenced by the testimony of a witness or the contents of a document, the identity and location of the witness or

document shall be included in the certificate. For purposes of this section, a fact is corroborative of an allegation if it confirms or supports the allegation. The opinion of any mental health practitioner concerning the plaintiff shall not constitute a corroborative fact for purposes of this section.

(2) Where the application to name a defendant is made prior to that defendant's appearance in the action, neither the application nor the certificate of corroborative fact by the attorney shall be served on the defendant or defendants, nor on any other party or their counsel of record.

(3) Where the application to name a defendant is made after that defendant's appearance in the action, the application shall be served on all parties and proof of service thereof provided to the court, but the certificate of corroborative fact by the attorney shall not be served on any party or their counsel of record.

(*l*) The court shall review the application and the certificate of corroborative fact in camera and, based solely on the certificate and any reasonable inferences to be drawn therefrom, shall, if one or more facts corroborative of one or more of the charging allegations against a defendant has been shown, order that the complaint may be amended to substitute the name of the defendant or defendants.

(m) The court shall keep under seal and confidential from the public and all parties to the litigation other than the plaintiff any and all certificates of corroborative fact filed pursuant to subdivision (k).

(n) Upon the favorable conclusion of the litigation with respect to any defendant for whom a certificate of merit was filed or for whom a certificate of merit should have been filed pursuant to this section, the court may, upon the motion of a party or upon the court's own motion, verify compliance with this section by requiring the attorney for the plaintiff who was required by subdivision (e) to execute the certificate to reveal the name, address, and telephone number of the person or persons consulted with pursuant to subdivision (e) that were relied upon by the attorney in preparation of the certificate of merit. The name, address, and telephone number shall be disclosed to the trial judge in camera and in the absence of the moving party. If the court finds there has been a failure to comply with this section, the court may order a party, a party's attorney, or both, to pay any reasonable expenses, including attorney's fees, incurred by the defendant for whom a certificate of merit should have been filed.

(o) The amendments to this section enacted at the 1990 portion of the 1989–90 Regular Session shall apply to any action commenced on or after January 1, 1991, including any action otherwise barred by the period of limitations in effect prior to January 1, 1991, thereby reviving those causes of action which had lapsed or technically expired under the law existing prior to January 1, 1991.

(p) The Legislature declares that it is the intent of the Legislature, in enacting the amendments to this section enacted at the 1994 portion of the 1993–94 Regular Session, that the express language of revival added to this section by those amendments shall

apply to any action commenced on or after January 1, 1991.

CHAPTER 289

An act to amend Section 854.1 of the Financial Code, relating to financial institutions.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 854.1 of the Financial Code is amended to read:

854.1. Notwithstanding Section 10145 of the Business and Professions Code or any other provision of law, but subject to the limitations of Section 854, benefits accruing from the placement in a non-interest bearing account of a commercial bank (including a national banking association) of funds received by a real estate broker who collects payments or provides services in connection with a loan secured by a lien on real property under subdivision (d) of Section 10131 or Section 10131.1 of the Business and Professions Code shall inure to the broker, unless otherwise agreed in writing by the broker and the lender or note owner on the loan. A borrower shall receive at least two percent simple interest per annum on impound account payments covered by Section 2954.8 of the Civil Code.

CHAPTER 290

An act to amend Section 463 of the Penal Code, relating to crimes.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 463 of the Penal Code is amended to read:

463. (a) Every person who violates Section 459, punishable as a second-degree burglary pursuant to subdivision 2 of Section 461, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster shall be guilty of the crime of looting, punishable by imprisonment in a county jail for one year or in the state prison. Any person convicted under this subdivision who is eligible for probation and who is granted probation shall, as a condition thereof, be confined in a county jail for at least 180 days,

except that the court may, in the case where the interest of justice would best be served, reduce or eliminate that mandatory jail sentence, if the court specifies on the record and enters into the minutes the circumstances indicating that the interest of justice would best be served by that disposition. In addition to whatever custody is ordered, the court, in its discretion, may require any person granted probation following conviction under this subdivision to serve up to 240 hours of community service in any program deemed appropriate by the court, including any program created to rebuild the community.

For purposes of this section, the fact that the structure entered has been damaged by the earthquake, fire, flood, or other natural or manmade disaster shall not, in and of itself, preclude conviction.

(b) Every person who commits the crime of grand theft, as defined in Section 487, except grand theft of a firearm, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or unnatural disaster shall be guilty of the crime of looting, punishable by imprisonment in a county jail for one year or in the state prison. Every person who commits the crime of grand theft of a firearm, as defined in Section 487, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or unnatural disaster shall be guilty of the crime of looting, punishable by imprisonment in the state prison, as set forth in subdivision (a) of Section 489. Any person convicted under this subdivision who is eligible for probation and who is granted probation shall, as a condition thereof, be confined in a county jail for at least 180 days, except that the court may, in the case where the interest of justice would best be served, reduce or eliminate that mandatory jail sentence, if the court specifies on the record and enters into the minutes the circumstances indicating that the interest of justice would best be served by that disposition. In addition to whatever custody is ordered, the court, in its discretion, may require any person granted probation following conviction under this subdivision to serve up to 160 hours of community service in any program deemed appropriate by the court, including any program created to rebuild the community.

(c) Every person who commits the crime of petty theft, as defined in Section 488, during and within an affected county in a "state of emergency" or a "local emergency" resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster shall be guilty of a misdemeanor, punishable by imprisonment in a county jail for six months. Any person convicted under this subdivision who is eligible for probation and who is granted probation shall, as a condition thereof, be confined in a county jail for at least 90 days, except that the court may, in the case where the interest of justice would best be served, reduce or eliminate that mandatory minimum jail sentence, if the court specifies on the record and enters into the

minutes the circumstances indicating that the interest of justice would best be served by that disposition. In addition to whatever custody is ordered, the court, in its discretion, may require any person granted probation following conviction under this subdivision to serve up to 80 hours of community service in any program deemed appropriate by the court, including any program created to rebuild the community.

(d) (1) For purposes of this section, "state of emergency" means conditions which, by reason of their magnitude, are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat.

(2) For purposes of this section, "local emergency" means conditions which, by reason of their magnitude, are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat.

(3) For purposes of this section, a "state of emergency" shall exist from the time of the proclamation of the condition of the emergency until terminated pursuant to Section 8629 of the Government Code. For purposes of this section only, a "local emergency" shall exist from the time of the proclamation of the condition of the emergency by the local governing body until terminated pursuant to Section 8630 of the Government Code.

(4) Consensual entry into a commercial structure with the intent to commit a violation of Section 470, 476, 476a, 484f, or 484g of the Penal Code, shall not be charged as a violation under this section.

CHAPTER 291

An act to add Chapter 36 (commencing with Section 24950) to Part 13 of, and to repeal Sections 22331, 22332, 22333, and 22957 of, the Education Code, relating to teachers' retirement.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 22331 of the Education Code is repealed.

SEC. 2. Section 22332 of the Education Code is repealed.

SEC. 3. Section 22333 of the Education Code is repealed.

SEC. 4. Section 22957 of the Education Code is repealed.

SEC. 5. Chapter 36 (commencing with Section 24950) is added to Part 13 of the Education Code, to read:

CHAPTER 36. ANNUITY CONTRACT AND CUSTODIAL ACCOUNTS

24950. An annuity contract and custodial account as described in Section 403(b) of the Internal Revenue Code of 1986 shall be offered to all employees of any state agency who are members of the system or any employee of a local public agency or political subdivision of this state that employs persons in positions requiring or allowing membership in the system. The following criteria shall apply to that annuity contract and custodial account:

(a) The annuity contract and custodial account shall be offered for not less than five years.

(b) The annuity contract and custodial account may be administered by a qualified third-party administrator that shall, under agreement with the system, provide custodial, investment, recordkeeping, or administrative services, or any combination thereof. The third-party administrator shall not provide investment options.

(c) The investment options offered shall be determined by the board consistent with those annuity contract and custodial accounts described in Section 403(b) of the Internal Revenue Code of 1986.

(d) The system's investment staff shall make recommendations to the board as to the appropriate investment options. At a minimum, the board shall offer at least three investment options. The board shall have sole responsibility for the selection of service providers.

(e) All contributions made by participants shall be remitted directly to the administrator and held by the administrator under custody. Any investment gains or losses shall be credited to participant accounts. The forms of payment and disbursement procedure shall be consistent with those generally offered by similar annuity contracts and custodial accounts and applicable federal and state statutes governing those contracts and accounts.

(f) Any employer, other than the state, may elect to make contributions to the employee's annuity contract and custodial account on behalf of the employee. The employer shall take whatever action is necessary to implement this section, including the adoption of an annuity contract and custodial account, or provide the appropriate authorization in accordance with the provision of Section 403(b) of the Internal Revenue Code of 1986. Contributions made by an employer under this section are excluded from the definition of "compensation" and "salary" as provided in Section 22114.

(g) The design and administration of the annuity contract and custodial account shall comply with the applicable provisions of the Internal Revenue Code of 1986 and the Revenue and Taxation Code. Section 770.3 of the Insurance Code shall not be applicable.

24951. If the rate of participation in the annuity contract and custodial account is less than 2 percent of the system's active membership upon the completion of the initial five years of administration, the board may elect to terminate the offering of the

annuity contract and custodial account as described in Section 403(b) of the Internal Revenue Code of 1986. The board shall provide two years' notice to the annuity contract and custodial account participants of its intention to terminate.

24952. (a) Any annuity contract and custodial account advertised, promoted, or offered through one or more third-party service providers, shall provide for recovery of all costs and expenses of its own administration, including, but not limited to, advertising, promotion, legal, accounting, recordkeeping, and investment costs and expenses.

(b) Any annuity contract and custodial account administered by the system shall provide for the recovery of all costs and expenses of its administration.

(c) The system may promote and advertise an annuity contract and custodial account administered directly by the system or by a third-party administrator.

CHAPTER 292

An act to amend Section 76219 of the Government Code, relating to courts.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 76219 of the Government Code is amended to read:

76219. (a) The Courthouse Construction Fund established in Los Angeles County pursuant to Section 76100 shall be known as the Robbins Courthouse Construction Fund.

(b) All courtroom construction in the County of Los Angeles which utilizes moneys from the Robbins Courthouse Construction Fund or moneys borrowed and owed against the Robbins Courthouse Construction Fund shall be within the boundaries of the San Fernando Valley Statistical Area and the Los Cerritos Municipal Court District, until the time that the County of Los Angeles has spent a total of at least forty-three million dollars ($43,000,000) on courthouse construction within the San Fernando Valley Statistical Area and at least eight million dollars ($8,000,000) within the Los Cerritos Municipal Court District for the Bellflower Courthouse.

(c) All courtroom construction in the County of Los Angeles which utilizes moneys from the Robbins Courthouse Construction Fund or moneys borrowed against the Robbins Courthouse Construction Fund shall be within the boundaries of the San Fernando Valley Statistical Area, within the boundaries of the Los Cerritos Municipal Court District, within the boundaries of the East

Los Angeles Municipal Court District, within the Downey Municipal Court District, within the community of Hollywood, or within the West Los Angeles Branch of the Los Angeles Municipal Court District, until the time that the County of Los Angeles has fulfilled the requirements of subdivision (b) and has additionally spent at least sixteen million five hundred thousand dollars ($16,500,000) on courthouse construction within the East Los Angeles Municipal Court District, has spent at least ten million dollars ($10,000,000) on courthouse construction within the Downey Municipal Court District, has commenced construction on a courthouse with at least six courtrooms in the West San Fernando Valley, has commenced construction on a courthouse with at least two courtrooms in the community of Hollywood, and has commenced construction on a courthouse for the West Los Angeles Branch of the Los Angeles Municipal Court District.

(d) All courtroom construction in the County of Los Angeles which utilizes moneys from the Robbins Courthouse Construction Fund or moneys borrowed against the Robbins Courthouse Construction Fund shall be within the boundaries of the San Fernando Valley Statistical Area, within the boundaries of the Los Cerritos Municipal Court District, within the boundaries of the East Los Angeles Municipal Court District, within the Downey Municipal Court District, within the community of Hollywood, within the West Los Angeles Branch of the Los Angeles Municipal Court District, within the Pasadena Judicial District, within the Southeast Municipal Court District, within the South Bay Judicial District, within the Santa Monica Judicial District, within the Antelope Valley Judicial District, or within the Long Beach Judicial District until the time that the County of Los Angeles has fulfilled the requirements of subdivisions (b) and (c), and has commenced construction of new facilities or the expansion of existing facilities for the municipal courts in the Pasadena Judicial District, the north and south branches of the Southeast Municipal Court District, and the South Bay Judicial District, has commenced construction on a courthouse for the superior court with at least 18 courtrooms in the North Hollywood Redevelopment Project Area of the City of Los Angeles or immediately adjacent thereto, and has commenced construction of new facilities for the superior and municipal courts in the Santa Monica Judicial District, the Antelope Valley Judicial District, and the Long Beach Judicial District.

(e) For purposes of this section, the San Fernando Valley Statistical Area includes all land within the San Fernando Valley Statistical Area (as defined in subdivision (e) of Section 11093) as well as the City of San Fernando, the City of Hidden Hills, and the unincorporated areas of Los Angeles County located west of the City of Los Angeles, east and south of the Ventura County line, and north of a line extended westerly from the southern boundary of the San Fernando Valley Statistical Area (as defined in subdivision (c) of Section 11093).

(f) The moneys of the Robbins Courthouse Construction Fund together with any interest earned thereon shall be payable only for courtroom construction and land acquisition as authorized in subdivision (b) and, after the requirement of subdivision (b) has been met, shall be payable only for courtroom construction and land acquisition as authorized in subdivision (c) and, after the requirements of subdivisions (b) and (c) have been met, shall be payable only for courtroom construction and land acquisition as authorized in subdivision (d).

(g) Deposits to the fund shall continue through and including either (1) the 25th year after the initial calendar year in which the surcharge is collected or (2) whatever period of time is necessary to repay any borrowings made by the county to pay for construction provided for in this section, whichever time is longer.

(h) The resolution adopted by the Board of Supervisors of the County of Los Angeles on September 2, 1980, stating that the provisions of Chapter 578 of the Statutes of 1980 are necessary to the establishment of adequate courtroom facilities in the County of Los Angeles shall be deemed a resolution stating that the provisions of this section are necessary to the establishment of adequate courtroom facilities in the county, and shall satisfy the requirements of this section.

SEC. 2. Nothing in this act shall be construed to, in any way, modify the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Nothing in this act shall be construed to either express legislative intent relative to inclusion of the courthouse in the North Hollywood Redevelopment Plan or in any way provide authority to the Los Angeles Redevelopment Agency to assist in the construction of the North Hollywood Courthouse.

CHAPTER 293

An act to add Section 6516.6 to, and to add Chapter 6.6 (commencing with Section 54773) to Part 1 of Division 2 of Title 5 of, the Government Code, and to amend Sections 4703, 4703.2, and 4705 of the Revenue and Taxation Code, relating to local agency bonds, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 6516.6 is added to the Government Code, to read:

6516.6. Notwithstanding any other provision of law, a joint

powers agency established pursuant to a joint powers agreement in accordance with this chapter may issue bonds pursuant to Article 2 (commencing with Section 6540) of this chapter or Article 4 (commencing with Section 6584) of this chapter, in order to purchase obligations of local agencies or make loans to local agencies, which moneys the local agencies are hereby authorized to borrow, to finance the local agencies' unfunded actuarial pension liability or to purchase, or to make loans to finance the purchase of, delinquent assessments or taxes levied on the secured roll by the local agencies, the county, or any other political subdivision of the state. Notwithstanding any other provision of law, including Section 53854, the local agency obligations or loans, if any, shall be repaid in the time, manner and amounts, with interest, security, and other terms as agreed to by the local agency and the joint powers authority.

SEC. 2. Chapter 6.6 (commencing with Section 54773) is added to Part 1 of Division 2 of Title 5 of the Government Code, to read:

CHAPTER 6.6. BONDS

54773. This chapter shall be known and may be cited as the Teeter Plan Bond Law of 1994.

54773.1. The Legislature finds and declares all of the following:

(a) There is a need within the state to finance the alternative method of distribution of tax levies and collections of tax sale proceeds authorized pursuant to Sections 4701 to 4717, inclusive, of the Revenue and Taxation Code.

(b) That it is the intent of the Legislature to assist local agencies in obtaining sources of financing for these purposes.

54774. The definitions in this section shall govern the construction and interpretation of this chapter:

(a) "Bond purchase agreement" means a contractual agreement executed between the county and one or more investment bankers that underwrite the bonds.

(b) "Bonds" means evidences of indebtedness, including, but not limited to, bonds, notes, commercial paper, floating rate and variable maturity securities, and certificates of participation.

(c) "County" means any county or city and county of this state which has adopted an alternative method of distribution of tax levies and collections of tax sale proceeds authorized pursuant to Sections 4701 to 4717, inclusive, of the Revenue and Taxation Code.

(d) "Indenture" means any indenture, trust agreement, or similar document entered into by the county and a trustee or other fiduciary with respect to the bonds.

(e) "Tax revenues" means all current or delinquent taxes (and, if a county has made an election under Section 4702.5 of the Revenue and Taxation Code, assessments), redemption amounts, and delinquent penalties for which the county has advanced funds pursuant to Sections 4701 to 4717, inclusive, of the Revenue and Taxation Code.

54775. This chapter does not limit any other law and shall be deemed to provide a complete and supplemental method for exercising the powers authorized by this chapter, and shall be deemed as being supplemental to the powers conferred by other applicable laws. The issuance of bonds, financing, or refinancing under this chapter need not comply with the requirements of any other state laws applicable to the issuance of bonds.

54776. The county may, from time to time, issue its bonds in an aggregate principal amount the county determines necessary to provide sufficient funds for purposes of advancing moneys representing uncollected taxes in accordance with Section 4705 of the Revenue and Taxation Code, provided that the aggregate amount of all these bonds issued in any fiscal year, together with interest thereon, shall not exceed the tax revenues attributable to the fiscal year in which the bonds are issued, except that in the case of a county wishing to finance the initial apportionment pursuant to Section 4713 of the Revenue and Taxation Code, the aggregate principal amount of bonds that may be issued for that purpose, together with interest thereon, shall not exceed the aggregate amount of those initial apportionments plus any then-existing delinquent penalties.

54777. (a) The bonds may be issued as serial bonds or as term bonds, in one or more series. The bonds shall be authorized by resolution of the county approved by a majority vote of its board of supervisors, and shall, as provided by the resolution or by the terms of an indenture pursuant to which the bonds are issued, bear the date of issuance; the date of maturity not exceeding seven years from their date of issuance; the rate of interest, either fixed or variable, and if variable, not in excess of the maximum rate of interest specified therein; be in the form provided; be in registered form; be payable in lawful money of the United States at the place or places provided within or without the State of California; and be subject to the terms of redemption provided.

(b) The bonds shall be sold by the county at the time and in the manner set out in the county's resolution. The sale may be a public or private sale, and for the price or prices, and on terms and conditions, as the county determines proper. Pending preparation of the definitive bonds, the county may issue interim receipts, certificates, or temporary bonds that shall be exchanged for definitive bonds.

(c) The bonds shall be repaid from tax revenues and any other legally available funds of the county.

54778. Any resolution authorizing any bond or any issue of bonds may contain the following provisions, which shall be a part of the contract with the holders of the bonds to be authorized.

(a) Provisions pledging the tax revenues and any other legally available funds of the county to secure the payment of the bonds.

(b) Provisions setting aside reserves or sinking funds, and the regulation and disposition thereof.

(c) Limitations on the purpose to which the proceeds of any issue of bonds may be applied, and pledging the proceeds to secure the payment of the bonds.

(d) Limitations on the issuance of additional bonds, the terms on which additional bonds may be issued and secured, and the refunding of outstanding bonds.

(e) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds and the holders thereof that are required to give consent thereto, and the manner in which the consent may be given.

(f) Definitions of acts or omissions to act that constitute a default in the duties of the county to holders of its obligations, and providing the rights and remedies of the holders in the event of a default.

54779. The county may, out of any funds available therefor, purchase its bonds. The county may hold, pledge, cancel, or resell the bonds, subject to, and in accordance with, agreements with bondholders.

54780. Any bonds issued under this chapter may be secured by an indenture between the county and a corporate trustee or trustees, which may include any trust company or bank having the power of a trust company within or without the State of California.

(a) The indenture or the resolution providing for the issuance of the bonds may pledge or assign the tax revenues to be received. The indenture or resolution providing for the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including provisions specifically authorized to be included in any resolution or resolutions of the county authorizing bonds.

(b) Any bank or trust company doing business under the laws of the State of California, which may act as a depository of the proceeds of bonds or of tax revenues or other moneys, shall furnish indemnifying bonds or pledge securities when required by the county.

(c) The indenture may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action of bondholders. In addition, any indenture or resolution may contain other provisions the county determines to be reasonable and proper for the security of the bondholders.

54781. (a) The county may issue bonds for the purpose of refunding any bonds then outstanding, including the payment of any redemption premium thereon and any interest accrued, or to accrue, on their earliest or any subsequent date of redemption, purchase or maturity of these bonds. The limitations of Section 54776, as to the aggregate principal amount of bonds that may be issued in any fiscal year, shall not apply to bonds issued under this section.

(b) The proceeds of any bonds issued for the purpose of refunding outstanding bonds may be applied to the purchase or retirement at maturity or redemption of those outstanding bonds either on their

earlier or any subsequent redemption date or upon the purchase or retirement at the maturity thereof and may, pending this application, be placed in escrow to be applied to the purchase or retirement at maturity or redemption of those outstanding bonds on the date as may be determined by the county.

(c) Pending the foregoing use, the escrowed proceeds may be invested and reinvested in obligations of, or guaranteed by, the United States, or in certificates of deposit or time deposits secured by obligations of, or guaranteed by, the United States, maturing at the time or times appropriate to assure prompt payment of the principal, interest, and redemption premium, if any, of the outstanding bonds to be refunded. The interest, income and profits, if any, earned or realized on the investment may also be applied to the payment of the outstanding bonds to be refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of the proceeds and interest, income and profits, if any, earned or realized on the investments thereof, shall be returned to the county.

54782. Bonds issued by the county are legal investments for all trust funds, the funds of all insurance companies, banks, both commercial and savings, trust companies, executors, administrators, trustees and other fiduciaries, for state school funds and for any funds which may be invested in county, municipal or school district bonds. The bonds are securities that may legally be deposited with, and received by, any state or municipal officer or agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state is now, or may hereafter be, authorized by law, including deposits to secure public funds.

54783. Interest earned on any bond issued by the county shall at all times be free from state personal income tax and corporate income tax.

SEC. 3. Section 4703 of the Revenue and Taxation Code is amended to read:

4703. In each county that elects to adopt the procedure authorized by this chapter there is hereby created a tax losses reserve fund.

(a) The tax losses reserve fund shall be used exclusively, as hereinafter provided, to cover losses that may occur in the amount of tax liens as a result of special sales of tax-defaulted property. Whenever in any year the amount of the tax losses reserve fund has reached an amount equivalent to 3 percent of the total of all taxes and assessments levied on the secured roll for that year, the amounts hereinafter authorized to be credited to that fund may, for the remainder of that year, be credited to the county general fund.

(b) The auditor and treasurer shall keep apportioned tax resources accounts in such a manner that the balance of amounts apportioned to funds on an accrual basis shall be known by both officers. In addition, the auditor shall keep secured taxes receivable accounts in such a manner as to establish accountability for the

amounts receivable on the secured tax rolls. Secured tax rolls, as used in this chapter, include delinquent rolls prescribed by Section 2627.

SEC. 4. Section 4703.2 of the Revenue and Taxation Code is amended to read:

4703.2. (a) In any county electing to follow the procedure authorized by this chapter, the board of supervisors may, by September 1 of any fiscal year, on the recommendation of the county auditor, adopt a resolution electing to be governed by this section rather than the provisions of Section 4703. Upon adoption, a copy of this resolution shall be filed with the county auditor, the county treasurer, and the county tax collector. This election shall remain in effect each fiscal year unless the board of supervisors adopts another resolution by September 1 of a fiscal year electing to be governed instead by Section 4703. For the 1993–94 fiscal year only, the election to be governed by this section rather than Section 4703 may be made no later than January 15, 1994.

(b) In each county that elects to adopt the procedure authorized by this chapter and elects to be governed by this section rather than Section 4703 there shall be created a tax losses reserve fund.

(c) The tax losses reserve fund shall be used exclusively, as hereinafter provided, to cover losses that may occur in the amount of tax liens as a result of special sales of tax-defaulted property. In a county electing to be subject to this section rather than Section 4703, the tax losses reserve fund shall be maintained at not less than 50 percent of the total delinquent secured taxes and assessments as calculated at the end of the fiscal year. At the end of the fiscal year, amounts in the tax losses reserve fund that are in excess of 50 percent of the total delinquent secured taxes and assessments may be credited to the county general fund.

(d) The auditor and treasurer shall keep apportioned tax resources accounts in such a manner that the balance of amounts apportioned to funds on an accrual basis shall be known by both officers. In addition, the auditor shall keep secured taxes receivable accounts in such a manner as to establish accountability for the amounts receivable on the secured tax rolls. Secured tax rolls as used in this chapter include delinquent rolls prescribed by Section 2627.

SEC. 5. Section 4705 of the Revenue and Taxation Code is amended to read:

4705. (a) Upon completion of the tax roll as prescribed by Section 2152, the county auditor shall determine the total amount of taxes actually extended thereon for each fund for which a tax levy has been included. The amount so determined for each fund shall forthwith be apportioned to the credit of those funds on the accounts of the county auditor and county treasurer and the total thereof shall be entered on the apportioned tax resources accounts of both officers.

(b) Assessments entered on the secured tax roll shall be apportioned in the same manner if the board of supervisors has extended these procedures to assessments under Section 4702.5.

(c) Upon completion of the tax roll the auditor shall record the total amount due on the secured taxes receivable accounts.

(d) The board of supervisors shall provide which moneys in the county treasury, including but not limited to those credited to the tax losses reserve, shall be available to be drawn on to the extent of the amount of uncollected taxes credited to each fund for which a tax levy has been included, and those moneys may thereafter be drawn against in an amount not to exceed the amount of uncollected taxes credited to each fund for which a tax levy has been included in the same manner as if the amount credited had been collected. To the extent that moneys are so expended for a fund in advance of receipt of tax revenue therefor, the tax revenue may not be expended upon receipt. Moneys in the amount credited to the tax losses reserve, as well as tax revenues actually received for funds to the extent moneys have been expended therefor in advance of receipt, shall be available in the county treasury for payment for the same purposes and in the same amounts as the money advance was available prior to being advanced; provided however, that if the moneys so advanced were derived from the proceeds of the sale of bonds, including notes, certificates of participation, or other instruments evidencing indebtedness, authorized pursuant to subdivision (e) or otherwise permitted by law, or the investment of those amounts, then tax revenues actually received, including delinquent penalties, shall be used for the repayment of the bonds or the replenishment of any reserve fund for these bonds, or both.

(e) Any county that has elected to adopt the procedure authorized by this chapter is hereby authorized, in addition to any other financing permitted by law, to fund the procedure by the issuance of bonds payable from any delinquent taxes, assessments, and delinquent penalties in accordance with Chapter 6.6 (commencing with Section 54773) of Part 1 of Division 2 of Title 5 of the Government Code. Once the procedure authorized by this chapter is adopted, the obligation of the county to fund the procedure is an obligation imposed by law.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that joint powers authorities may be authorized to issue bonds to purchase obligations of local agencies, or make loans to local agencies, to finance the local agencies' unfunded actuarial pension liability, or to purchase, or make loans to finance the purchase of, delinquent assessments or taxes levied on the secured roll by the local agencies, the county or any other political subdivision of the state at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 294

An act to amend Section 1012.3 of the Military and Veterans Code, relating to veterans' institutions.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 1012.3 of the Military and Veterans Code is amended to read:

1012.3. Members of the home shall pay fees and charges as determined by the department, except that the total of the individual member's fees and charges for any fiscal year shall not be greater than as set forth in the following schedule:

(a) Fifty-five percent of the member's annual income, or one thousand two hundred dollars ($1,200) per month, for residential care, whichever is less.

(b) Sixty-five percent of the member's annual income, or two thousand three hundred dollars ($2,300) per month, for intermediate care, whichever is less.

(c) Seventy percent of the member's annual income, or two thousand five hundred dollars ($2,500) per month, for skilled nursing care, whichever is less.

CHAPTER 295

An act to amend Sections 888.2 and 940 of the Penal Code, relating to grand juries.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 888.2 of the Penal Code is amended to read:

888.2. As used in this title as applied to a grand jury, "required number" means:

(a) Twenty-three in a county having a population exceeding 4,000,000.

(b) Eleven in a county having a population of 20,000 or less, upon the approval of the board of supervisors.

(c) Nineteen in all other counties.

SEC. 2. Section 940 of the Penal Code is amended to read:

940. An indictment cannot be found without concurrence of at least 14 grand jurors in a county in which the required number of members of the grand jury prescribed by Section 888.2 is 23, at least

eight grand jurors in a county in which the required number of members is 11, and at least 12 grand jurors in all other counties. When so found it shall be endorsed, "A true bill," and the endorsement shall be signed by the foreman of the grand jury.

CHAPTER 296

An act to amend Sections 25299.51 and 25299.57 of, to add Article 10 (commencing with Section 25299.82) to Chapter 6.75 of Division 20 of, and to repeal Article 7.5 (commencing with Section 25299.82) of Chapter 6.75 of Division 20 of, the Health and Safety Code, relating to underground storage tanks, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 25299.51 of the Health and Safety Code is amended to read:

25299.51. The board may expend the money in the fund for all the following purposes:

(a) In addition to the purposes specified in subdivisions (c), (d), and (e), for expenditure by the board for the costs of implementing this chapter, which shall include costs incurred by the board pursuant to Article 10 (commencing with Section 25299.82).

(b) To pay for the administrative costs of the State Board of Equalization in collecting the fee imposed by Article 5 (commencing with Section 25299.40).

(c) To pay for the reasonable and necessary costs of the regional board or local agency for corrective action pursuant to Section 25299.36, up to one million dollars ($1,000,000) per occurrence. The Legislature may appropriate the money in the fund for expenditure by the board, without regard to fiscal year, for prompt action in response to any unauthorized release.

(d) To pay for the costs of an agreement for the abatement of, and oversight of the abatement of, an unauthorized release of hazardous substances from underground storage tanks, by a local agency, as authorized by Section 25297.1 or by any other provision of law, except that, for the purpose of expenditure of these funds, only underground storage tanks, as defined in Section 25299.24, shall be the subject of the agreement.

(e) To pay for the costs of cleanup and oversight of unauthorized releases at abandoned tank sites. The board shall not expend more than 25 percent of the total amount of money collected and deposited in the fund annually for the purposes of this subdivision and subdivision (h).

(f) To pay claims pursuant to Section 25299.57.

(g) To pay, upon order of the Controller, for refunds pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code.

(h) To pay for the reasonable and necessary costs of the regional board or the local agency for corrective action pursuant to subdivision (f) of Section 25299.3.

(i) To pay claims pursuant to Section 25299.58.

SEC. 2. Section 25299.57 of the Health and Safety Code is amended to read:

25299.57. (a) If the board makes the determination specified in subdivision (d), the board may only pay for the costs of corrective actions which exceed the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than nine hundred ninety thousand dollars ($990,000) for each occurrence. In the case of an owner or operator who, as of January 1, 1988, was required to perform corrective action, who initiated that corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), and who is undertaking the corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), the owner or operator may apply to the board for satisfaction of a claim filed pursuant to this article.

(b) For claims eligible for reimbursement pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the actual cost of corrective action to the board, which shall either approve or disapprove the costs incurred as reasonable and necessary.

(c) For claims eligible for prepayment pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate.

(d) A claim specified in subdivision (a) may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant is required to undertake or contract for corrective action pursuant to Section 25299.37, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code.

(3) (A) Except as provided in subparagraph (B), the claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280).

(B) All claimants who file their claim on or after January 1, 1994, and all claimants who filed their claim prior to that date but are not eligible for a waiver of the permit requirement pursuant to board regulations in effect on the date of the filing of the claim, and who did not obtain or apply for any permit required by subdivision (a)

of Section 25284 by January 1, 1990, shall be subject to subparagraph (A) regardless of the reason or reasons that the permit was not obtained or applied for. However, on and after January 1, 1994, the board may waive the provisions of subparagraph (A) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit.

(ii) Prior to submittal of the claim application, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

(iii) Prior to submittal of the claim application, the claimant has paid all current underground storage tank fees imposed pursuant to Section 25299.41 and all prior fees due on and after January 1, 1991.

(C) (i) A claimant who is exempted pursuant to subparagraph (B) shall obtain a level of financial responsibility pursuant to Section 25299.32 of at least twenty thousand dollars ($20,000).

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (B) were satisfied prior to the causing of any contamination. That demonstration may be made through a certification issued by the permitting agency based on site and tank tests at the time of permit application or in any other manner that is acceptable to the board.

(D) The board shall rank all claims resubmitted pursuant to subparagraph (B) lower than all claims filed before January 1, 1994, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(4) The board has approved either the costs incurred for the corrective action pursuant to subdivision (b) or the estimated costs for corrective action pursuant to subdivision (c).

(e) The board shall provide the claimant, whose cost estimate has been approved, a letter of credit authorizing payment of the costs from the fund.

(f) The claimant may submit a claim for partial payment to cover the costs of corrective action performed in stages, as approved by the board.

(g) (1) Any claimant who submits a claim for payment to the board shall submit multiple bids for prospective costs as prescribed in regulations adopted by the board pursuant to Section 25299.77.

(2) Paragraph (1) does not apply to a tank owned or operated by a public agency if the prospective costs are for private professional services within the meaning of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code and those services are procured in accordance with the requirements of that chapter.

SEC. 3. Article 7.5 (commencing with Section 25299.82) of Chapter 6.75 of Division 20 of the Health and Safety Code is repealed.

SEC. 4. Article 10 (commencing with Section 25299.82) is added

to Chapter 6.75 of Division 20 of the Health and Safety Code, to read:

Article 10. Blythe Environmental Remediation Demonstration Project

25299.82. The Legislature hereby finds and declares all of the following:

(a) It is estimated that over 250,000 gallons of petroleum have been released to the ground within the City of Blythe as a result of underground storage tanks that have leaked over the years.

(b) The magnitude of contamination within such a confined geographic area makes it difficult for the local agency, the regional board, and responsible parties to identify the sources of contamination and to avoid further contamination once a particular site is cleaned up.

(c) An integrated effort to take corrective action will enable cleanup actions to proceed efficiently, quickly, and at less cost than would be the case if cleanup were to be conducted by individual actions.

(d) It is in the best interests of the residents of the City of Blythe and the people of this state, and of significant statewide benefit, for the board, in conjunction with the regional boards and local agencies, to establish cleanup procedures for groundwater plumes contaminated with petroleum that is commingled from several responsible parties to ensure the adequate protection of groundwater and efficient use of the fund.

25299.83. In carrying out its duties pursuant to this chapter, the board shall address the issue of groundwater plumes that are contaminated with petroleum that is commingled from several responsible parties, and shall take any action that is reasonably necessary to address that issue. Those actions shall include, but are not limited to, all of the following:

(a) Not later than January 1, 1996, the board shall, if it determines that regulations are necessary, develop proposed regulations that, if adopted, will govern all of the following:

(1) Cleanup and plume management procedures applicable when unauthorized releases from multiple responsible parties have resulted in commingled contamination of groundwater plumes.

(2) Handling of claims filed against the fund pursuant to this chapter involving multiple claimants when the unauthorized releases have resulted in commingled contamination of groundwater plumes, including claims payments made pursuant to cooperative remediation efforts by responsible parties.

(b) Include in the annual report required by Section 25299.81, which is due on or before September 30, 1995, the board's conclusions concerning the board's authority to adopt the regulations that may be developed pursuant to subdivision (a). If the board determines that it does not have sufficient authority, as defined in subdivision (b) of Section 11349 of the Government Code, to adopt the

regulations, the board shall recommend legislation which the board believes is needed to adopt regulations that address the matters set forth in paragraphs (1) and (2) of subdivision (a).

(c) In conjunction with the City of Blythe and the local agency, establish the Blythe Environmental Remediation Demonstration Project to identify the locations of unauthorized releases which have occurred within the City of Blythe, provide estimates regarding the amount of funding and potential funding mechanisms that would be needed to remediate those releases, and recommend the nature and extent of corrective action and plume management that may be necessary to take pursuant to Section 25299.37.

(d) The board shall enter into a contract with the City of Blythe for the purpose of establishing the demonstration project pursuant to subdivision (c).

(e) Not later than May 1, 1995, report to the Legislature on the status of the demonstration project.

SEC. 5. The sum of one hundred sixty thousand dollars ($160,000) is hereby appropriated from the Underground Storage Tank Cleanup Fund to the State Water Resources Control Board for the purposes specified in Section 25299.83 of the Health and Safety Code.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to enable the City of Blythe and the state to establish an environmental remediation demonstration project within the City of Blythe to ensure adequate protection of groundwater at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 297

An act to amend Sections 11715 and 11716.01 of the Insurance Code, relating to workers' compensation insurance.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. The Legislature finds and declares that the federal government has encouraged all state and local governments to issue their tax-exempt debt in "book entry" form. The State of California now issues all of its bonds in "book entry" form. Most municipalities in California now issue their bonds in "book entry" form. These bonds finance needed infrastructure improvements in California. Therefore, it is in the best interest of the state that workers' compensation insurers be permitted to purchase and invest in these securities.

SEC. 2. Section 11715 of the Insurance Code is amended to read:

11715. (a) Any workers' compensation insurer may, in lieu of and for the same purpose as the bond required by Section 11690, and upon payment of the fee prescribed in this article, deposit cash instruments, approved letters of credit, or approved interest-bearing securities or approved stocks readily convertible into cash, investment certificates or share accounts issued by a savings and loan association doing business in this state and insured by the Federal Deposit Insurance Corporation, certificates of deposit or savings deposits in a bank licensed to do business in this state, or approved securities registered with a qualified depository located in a reciprocal state as defined in Section 1104.9. The deposit shall be made from time to time as demanded by the commissioner and may be made with the Treasurer, or a bank or savings and loan association authorized to engage in the trust business pursuant to Division 1 (commencing with Section 99) or Division 2 (commencing with Section 5000) of the Financial Code, or a trust company. A deposit of securities registered with a qualified depository located in a reciprocal state as defined in Section 1104.9 may only be made in a bank licensed to do business and located in this state that is a qualified custodian as defined in paragraph (1) of subdivision (a) of Section 1104.9 and that maintains deposits of at least seven hundred fifty million dollars ($750,000,000). The deposit shall be made subject to the approval of the commissioner under those rules and regulations that he or she shall promulgate. The deposit shall be maintained at a deposit value of not less than twenty-five thousand dollars ($25,000), nor less than the reserves required of the insurer to be maintained under any of the provisions of Article 1 (commencing with Section 11550) of Chapter 1 of Part 3 of Division 2, relating to loss reserves on workers' compensation business of the insurer in this state, nor less than the sum of the amounts specified in subdivision (a) of Section 11699.

(b) Any workers' compensation insurer electing to bring itself within the provisions of subdivision (a) by submitting securities, stock, investment certificates, or share deposits registered in a depositor's name, shall execute a trust agreement in a form approved by the commissioner between the insurer, the institution in which the deposit is made or, where applicable, the qualified custodian of the deposit, and the commissioner, that grants to the commissioner the authority to withdraw the deposit as set forth in Section 11716. The insurer shall also execute and deliver in duplicate to the commissioner a power of attorney in favor of the commissioner for the purposes specified in Section 11690, supported by a resolution of the depositor's board of directors. The power of attorney and director's resolution shall be on forms approved by the commissioner, shall provide that the power of attorney cannot be revoked or withdrawn without the consent of the commissioner, and shall be acknowledged as required by law.

(c) The commissioner shall require payment of one hundred

seventy-seven dollars ($177) in advance as a fee for the initial filing and the first semiannual review of each letter of credit specified in subdivision (a). In addition, each workers' compensation insurer depositing a letter of credit shall pay an annual fee of one hundred eighteen dollars ($118) in advance on account of the letter until its expiration or revocation. This fee shall be for annual periods commencing each January 1 and shall be due and payable on the following April 1.

(d) The commissioner shall require payment of one hundred eighteen dollars ($118) in advance as a fee for the initial filing of a trust agreement with a bank, savings and loan association, or trust company on deposits made pursuant to subdivision (a). An additional fee of one hundred eighteen dollars ($118) shall be payable for each amendment, supplement, or other change to the deposit agreement. In addition, the commissioner shall require the payment of fifty-eight dollars ($58) in advance for receiving and processing deposit schedules pursuant to this section. An additional fee of twenty-nine dollars ($29) shall be payable for each withdrawal, substitution, or any other change in the deposit.

SEC. 3. Section 11716.01 of the Insurance Code is amended to read:

11716.01. (a) If the commissioner has been named conservator or liquidator of that insurer pursuant to Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1 and has determined that the insurer shall not continue to carry on its business as a workers' compensation insurer, or, if it appears to the commissioner that any of the conditions set forth in Section 1011 exist or that irreparable loss and injury to the property and business of a workers' compensation insurer has occurred or may occur unless the commissioner acts immediately without notice and before applying to the court for any order, the commissioner shall use the obligations of the surety on the bond and the proceeds of the deposit to pay or procure the payment of such obligations as set forth in this article. The obligations of the bond and the proceeds of the deposit shall in such event inure to the commissioner as a trust to be held separate and apart from all other assets of the insurer held by the commissioner. They shall be used only for the purposes set forth and in accordance with the procedures established in this article and shall only be subject to the orders of the court in which the conservation or liquidation proceedings are pending to the extent provided in this article.

(b) If the commissioner has proceeded under subdivision (a) and a deposit of securities registered with a qualified depository located in a reciprocal state and in the custody of a qualified custodian pursuant to Section 1104.9 cannot be released to the commissioner according to the terms of the agreement entered into pursuant to subdivision (b) of Section 11715 or the requirements of Section 11716 because of a delinquency proceeding initiated in the reciprocal state in which the qualified depository is located, or, if the deposit of

securities registered with a qualified depository has been executed upon at any time by any creditor of an insurer and that execution has been affirmed by a written opinion of a court of competent federal appellate jurisdiction, the commissioner may, after a public hearing and upon a finding that deposits of securities registered with that depository do not allow the commissioner to discharge his or her responsibilities as set forth in this chapter, require workers' compensation insurers authorized to transact insurance in this state to cease and desist making any further deposits authorized by Section 11715 in approved securities registered with that depository.

CHAPTER 298

An act to add Section 8565.6 to the Business and Professions Code, to amend Sections 12203 and 14153 of, and to add Article 16 (commencing with Section 29320) to Chapter 1 of Division 13 of, the Food and Agricultural Code, relating to bees.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 8565.6 is added to the Business and Professions Code, to read:

8565.6. An applicant for a Branch 2 license may elect to be certified in the handling, control, and techniques of removal of Africanized honey bees. The board shall develop a program to certify applicants in this specialty, or may approve a program for certification developed by the Pest Control Operators of California.

SEC. 2. Section 12203 of the Food and Agricultural Code is amended to read:

12203. (a) Applicants shall be examined on the requirements of laws and regulations concerning pesticide use and shall elect to be examined for licensing in one or more of the following categories:

(1) Residential, industrial, and institutional pest control.
(2) Landscape maintenance pest control.
(3) Right-of-way pest control.
(4) Agricultural pest control.
(5) Forest pest control.
(6) Aquatic pest control.
(7) Regulatory pest control.
(8) Seed treatment.
(9) Agricultural pest control-animal.
(10) Demonstration and research.
(11) Health-related pest control.

(b) In addition to being licensed in one or more of the categories in subdivision (a), an applicant for licensing may elect to be trained

in the handling, control, and techniques of removal of Africanized honey bees.

(c) The director may develop a training program that covers the handling, control, and techniques of removal of Africanized honey bees or may approve a training program developed by the Pest Control Operators of California or any other equivalent training program, subject to the following requirements:

(1) A certificate of training shall be presented by the training provider to the applicant upon completion of the approved training program.

(2) Providers of approved Africanized honey bee training shall submit to the director a listing of those persons who have completed the training, including, but not limited to, the following information:

(A) The full name of each person who has completed the training.

(B) The license or certificate number of each person who has completed the training, if the person trained is licensed by the Department of Pesticide Regulation.

(3) The providers of approved Africanized honey bee training shall maintain a record for three years of the individuals who have completed the training.

SEC. 3. Section 14153 of the Food and Agricultural Code is amended to read:

14153. (a) Applicants shall be examined on the requirements of laws and regulations concerning pesticide use and shall elect to be examined for certification in one or more of the following categories:

(1) Residential, industrial, and institutional pest control.

(2) Landscape maintenance pest control.

(3) Right-of-way pest control.

(4) Agricultural pest control.

(5) Forest pest control.

(6) Aquatic pest control.

(7) Regulatory pest control.

(8) Seed treatment.

(9) Agricultural pest control-animal.

(10) Demonstration and research.

(11) Health-related pest control.

(b) In addition to being certified in one or more of the categories in subdivision (a), an applicant may elect to be trained in the handling, control, and techniques of removal of Africanized honey bees.

(c) The director may develop a training program that covers the handling, control, and techniques of removal of Africanized honey bees or may approve a training program developed by the Pest Control Operators of California or any other equivalent training program, subject to the following requirements:

(1) A certificate of training shall be presented by the training provider to the applicant upon completion of the approved training program.

(2) Providers of approved Africanized honey bee training shall

submit to the director a listing of those persons who have completed the training, including, but not limited to, the following information:

(A) The full name of each person who has completed the training.

(B) The license or certificate number of each person who has completed the training, if the person trained is licensed by the Department of Pesticide Regulation.

(3) The providers of approved Africanized honey bee training shall maintain a record for three years of the individuals who have completed the training.

SEC. 4. Article 16 (commencing with Section 29320) is added to Chapter 1 of Division 13 of the Food and Agricultural Code, to read:

Article 16. Africanized Honey Bees

29320. The secretary, in cooperation with the Regents of the University of California, may approve programs statewide to train, on a voluntary basis, beekeepers in the maintenance of colonies free of Africanized honey bees.

29321. (a) Any hive or comparable apparatus that is not occupied by a live bee colony, and that is accessible to bees, is a public nuisance. The hive or apparatus shall be subject to abatement in the manner provided for in Article 14 (commencing with Section 29200).

(b) Notwithstanding subdivision (a), if the commissioner determines that any bees present in an abandoned hive or comparable apparatus are not aggressive and harbor no diseases, the abandoned hive or comparable apparatus shall not be deemed a public nuisance. In those cases, the commissioner may request that any beekeeper remove the hive or comparable apparatus from the premises. Any beekeeper who complies with the commissioner's request may take permanent possession of the abandoned hive or apparatus.

CHAPTER 299

An act to add Section 33445.3 to the Health and Safety Code, and to add Section 5025 to the Public Resources Code, relating to historical resources.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 33445.3 is added to the Health and Safety Code, to read:

33445.3. Notwithstanding any other provision of law, the California City Redevelopment Agency shall not directly support the activities of, or pay for any part of the land or any building, facility,

structure, or other improvements that specifically benefit, the California City Museum and Restoration Facility.

SEC. 2. Section 5025 is added to the Public Resources Code, to read:

5025. (a) The Legislature hereby finds and declares that there is a need for state repositories dedicated to the preservation and restoration of historic artifacts relating to the science, art, and practice of aviation in this state and the nation.

(b) The California City Museum and Restoration Facility is hereby designated a state aviation museum.

(c) The department may extend technical assistance and other nonfinancial support to the California City Museum and Restoration Facility. The California City Museum and Restoration Facility shall reimburse the department for all costs incurred pursuant to this subdivision.

(d) The California City Museum and Restoration Facility may serve as a repository for the purpose of collecting, preserving, restoring, and displaying artifacts and memorabilia of the significant role that the state has played in the development of aviation, and may also store and display national and international memorabilia of the aviation industry and its pioneers and practitioners.

(e) Prior to the acceptance of any aircraft, any aircraft-related artifacts, tools, or supplies, or any other materials for display in the aviation museum, it is the intent of the Legislature that the California City Museum and Restoration Facility execute an agreement with any donor of those materials that provides for the disposition of the materials if the museum closes or otherwise becomes inaccessible to the public.

CHAPTER 300

An act to add Chapter 9.3 (commencing with Section 66030) to Division 1 of Title 7 of the Government Code, relating to land use.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Chapter 9.3 (commencing with Section 66030) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 9.3. MEDIATION AND RESOLUTION OF LAND USE DISPUTES

66030. (a) The Legislature finds and declares all of the following:

(1) Current law provides that aggrieved agencies, project proponents, and affected residents may bring suit against the land

use decisions of state and local governmental agencies. In practical terms, nearly anyone can sue once a project has been approved.

(2) Contention often arises over projects involving local general plans and zoning, redevelopment plans, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), development impact fees, annexations and incorporations, and the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

(3) When a public agency approves a development project that is not in accordance with the law, or when the prerogative to bring suit is abused, lawsuits can delay development, add uncertainty and cost to the development process, make housing more expensive, and damage California's competitiveness. This litigation begins in the superior court, and often progresses on appeal to the Court of Appeal and the Supreme Court, adding to the workload of the state's already overburdened judicial system.

(b) It is, therefore, the intent of the Legislature to help litigants resolve their differences by establishing formal mediation processes for land use disputes. In establishing these mediation processes, it is not the intent of the Legislature to interfere with the ability of litigants to pursue remedies through the courts.

66031. (a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox Local Government Reorganization Act (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(b) Within five days after the deadline for the respondent or

defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) The Office of Permit Assistance within the Trade and Commerce Agency, pursuant to its authority in Article 1 (commencing with Section 15399.50) of Chapter 11 of Part 6.7 of Division 3 of Title 2.

(4) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

66032. (a) Notwithstanding any provision of law to the contrary, all time limits with respect to an action shall be tolled while the mediator conducts the mediation, pursuant to this chapter.

(b) Mediations conducted by a mediator pursuant to this chapter that involve less than a quorum of a legislative body or a state body shall not be considered meetings of a legislative body pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), nor shall they be considered meetings of a state body pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

(c) Any action taken regarding mediation conducted pursuant to this chapter shall be taken in accordance with the provisions of current law.

(d) Ninety days after the commencement of the mediation, and every 90 days thereafter, the action shall be reactivated unless the parties to the action do either of the following:

(1) Arrive at a settlement and implement it in accordance with the provisions of current law.

(2) Agree by written stipulation to extend the mediation for an another 90-day period.

(e) A mediator shall not file, and a court shall not consider, any declaration or finding of any kind by the mediator, other than a required statement of agreement or nonagreement, unless all parties in the mediation expressly agree otherwise, in writing.

(f) Sections 703.5 and 1152.5 of the Evidence Code shall apply to any mediation conducted pursuant to this chapter.

66033. (a) At the end of the mediation, the mediator shall file a report with the Office of Permit Assistance, consistent with Section 1152.5 of the Evidence Code, containing each of the following:

(1) The title of the action.

(2) The names of the parties to the action.

(3) An estimate of the costs avoided, if any, because the parties used mediation instead of litigation to resolve their dispute.

(b) The sole purpose of the report required by this section is the collection of information needed by the office to prepare its report to the Legislature pursuant to Section 66036.

66034. If the mediation does not resolve the action, the court may, in its discretion, schedule a settlement conference before a judge of the superior court. If the action is later heard on its merits, the judge hearing the action shall not be the same judge who conducted the settlement conference, except in counties with only one judge of the superior court.

66035. The Judicial Council may adopt rules, forms, and standards necessary to implement this chapter.

66036. By January 1, 2001, the Office of Permit Assistance within the Trade and Commerce Agency, in cooperation with the Judicial Council, shall report to the Legislature regarding the implementation of this chapter. The office shall consult with persons and interest groups with knowledge of the mediation process, and affected public agencies, including, but not limited to, councils of governments. The report may recommend the extension of the chapter, changes to the chapter, or the repeal of the chapter.

66037. No action filed on or after January 1, 2002, shall be subject to this chapter unless a later enacted statute which is chaptered before January 1, 2002, extends this date or deletes this section.

CHAPTER 301

An act to amend Section 1872.83 of the Insurance Code, and to amend Section 139.2 of the Labor Code, relating to workers' compensation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 1872.83 of the Insurance Code is amended to read:

1872.83. (a) The commissioner shall ensure that the Bureau of Fraudulent Claims aggressively pursues all reported incidents of probable workers' compensation fraud, as defined in subdivision (a) of Section 1871.4 and Section 549 of the Penal Code, and forwards to the appropriate disciplinary body the names, along with all supporting evidence, of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity. The Bureau of Fraudulent Claims shall forward to the Insurance Commissioner or the Director of Industrial Relations, as appropriate, the name, along with all supporting evidence, of any insurer, as defined in subdivision (c) of Section 1877.1, suspected of actively engaging in the fraudulent denial of claims.

(b) To fund increased investigation and prosecution of workers' compensation fraud, there shall be an annual assessment as follows:

(1) The aggregate amount of the assessment shall be determined by the Fraud Assessment Commission, which is hereby established. The commission shall be composed of five members consisting of two representatives of self-insured employers, one representative of insured employers, one representative of workers' compensation insurers, and the President of the State Compensation Insurance Fund, or his or her designee.

The Governor shall appoint members representing self-insured employers, insured employers, and insurers. The term of office of members of the commission shall be four years, and a member shall hold office until the appointment of a successor. However, the initial terms of three of the members appointed by the Governor shall expire, respectively, on December 31, 1992, December 31, 1993, and December 31, 1994. The President of the State Compensation Insurance Fund shall be an ex officio, voting member of the commission. Members of the commission shall receive one hundred dollars ($100) for each day of actual attendance at commission meetings and other official commission business, and shall also receive their actual and necessary traveling expenses incurred in the performance of commission duties. Payment of per diem and travel expenses shall be made from the Workers' Compensation Fraud Account in the Insurance Fund, established in paragraph (4), upon appropriation by the Legislature.

(2) In determining the aggregate amount of the assessment, the Fraud Assessment Commission shall consider the advice and recommendations of the Bureau of Fraudulent Claims and the commissioner.

(3) The aggregate amount of the assessment shall be collected by the Director of Industrial Relations pursuant to Section 62.6 of the Labor Code. The Fraud Assessment Commission shall annually advise the Director of Industrial Relations, not later than March 15, of the aggregate amount to be assessed for the next fiscal year.

(4) The amount collected, together with the fines collected for violations of the unlawful acts specified in Section 1871.4 and Section 549 of the Penal Code, shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund, which is hereby created, and may be used, upon appropriation by the Legislature, only for enhanced workers' compensation fraud investigation and prosecution as provided in this section.

(c) For each fiscal year, the total amount of revenues derived from the assessment pursuant to subdivision (b) shall, together with amounts collected pursuant to fines imposed for unlawful acts described in Section 1871.4 and Section 549 of the Penal Code, not be less than three million dollars ($3,000,000). Any funds appropriated by the Legislature pursuant to subdivision (b) that are not expended in the fiscal year for which they have been appropriated shall be applied to satisfy for the immediately following fiscal year the minimum total amount required by this subdivision.

(d) After incidental expenses, 50 percent of the funds to be used for the purposes of this section shall be provided to the Bureau of Fraudulent Claims of the Department of Insurance for enhanced investigative efforts and 50 percent of the funds shall be distributed to district attorneys, pursuant to a determination by the commissioner with the advice and consent of the bureau and the Fraud Assessment Commission, as to the most effective distribution of moneys for purposes of the investigation and prosecution of workers' compensation insurance fraud cases. Each district attorney seeking a portion of the funds shall submit to the commissioner an application setting forth in detail their proposed use of any funds provided. Any district attorney receiving funds pursuant to this subdivision shall submit an annual report to the commissioner with respect to the success of their efforts. Upon receipt, the commissioner shall provide copies to the bureau and the Fraud Assessment Commission of any application, annual report, or other documents with respect to the allocation of money pursuant to this subdivision. These documents shall be public records.

(e) If any district attorney is determined by the commissioner to be unable or unwilling to investigate and prosecute workers' compensation fraud claims, the commissioner shall discontinue distribution of funds allocated for that county and may redistribute those funds according to this subdivision.

(1) The commissioner shall promptly determine whether any other county could assert jurisdiction to prosecute the fraud claims that would have been brought in the nonparticipating county, and if so, the commissioner may award funds to conduct the prosecutions redirected pursuant to this subdivision, which funds may be in

addition to any other fraud prosecution funds otherwise awarded under this section. Any district attorney receiving funds pursuant to this subdivision shall first agree that the funds shall be used solely for investigating and prosecuting those cases of workers' compensation fraud redirected pursuant to this subdivision and submit an annual report to the commissioner with respect to the success of the district attorney's efforts. The commissioner shall keep the Fraud Assessment Commission fully informed of all reallocations of funds under this paragraph.

(2) If the commissioner determines that no district attorney is willing or able to investigate and prosecute the workers' compensation fraud claims arising in the nonparticipating county, the commissioner, with the advice and consent of the Fraud Assessment Commission, may award to the Attorney General some or all of the funds previously awarded to the nonparticipating county. Before the commissioner may award any funds, the Attorney General shall submit to the commissioner an application setting forth in detail his or her proposed use of any funds provided and agreeing that any funds awarded shall be used solely for investigating and prosecuting those cases of workers' compensation fraud redirected pursuant to this subdivision. The Attorney General shall submit an annual report to the commissioner with respect to the success of the fraud prosecution efforts of his or her office.

(3) Neither the Attorney General nor any district attorney shall be required to relinquish control of any investigation or prosecution undertaken pursuant to this subdivision unless the commissioner determines that satisfactory progress is no longer being made on the case or the case has been abandoned.

(4) No county that has become a nonparticipating county due to the inability or unwillingness of its district attorney to investigate and prosecute workers' compensation fraud shall become eligible to receive funding under this section until it has submitted a new application that meets the requirements of subdivision (d) and the applicable regulations.

(f) The commissioner shall adopt rules and regulations to implement this section in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Included in the rules and regulations shall be the criteria for redistributing funds to district attorneys and the Attorney General. The adoption of the rules and regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

SEC. 2. Section 139.2 of the Labor Code is amended to read:

139.2. (a) The Industrial Medical Council shall appoint qualified medical evaluators in each of the respective specialties as required for the evaluation of medical issues. The appointments shall be for two-year terms.

(b) The council shall appoint as qualified medical evaluators

physicians, as defined in Section 3209.3, who are licensed to practice in this state and who demonstrate that they meet each of the following requirements:

(1) Pass an examination written and administered by the Industrial Medical Council for the purpose of demonstrating competence in evaluating medical issues in the workers' compensation system. The council shall administer the first examination on or before July 1, 1994. Physicians qualified immediately before the first examination is administered shall pass an examination by November 1, 1994, to meet this requirement. Any physician applying for appointment after July 1, 1994, shall pass an examination prior to his or her appointment as a qualified medical evaluator. Physicians are not required to pass an additional examination for reappointment. For preparation of the first examination, a panel of not more than 40 experts, appointed by the Industrial Medical Council, representing the physician specialties required to take the qualified medical evaluator examination, shall assist the council in determining the knowledge, skills, and abilities required by the qualified medical evaluator, writing items for the examination, and conducting pretest and posttest reviews of the items. This panel of experts shall be exempt from the requirement of having to pass the examination to be appointed as a qualified medical evaluator. This panel of experts shall include: current or past council members, or both, representatives from the professional associations of those physician specialties required for the evaluation of medical issues, or physicians deemed to be well qualified in the evaluation of medical issues and having a minimum of 10 years in practice, five years of workers' compensation evaluation, and having served as an agreed medical evaluator at least eight times in the previous 12 months.

(2) Devote at least one-third of total practice time to providing direct medical treatment, or has served as an agreed medical evaluator on eight or more occasions in the 12 months prior to applying to be a qualified medical evaluator.

(3) Meet one of the following requirements:

(A) Is board certified, or board eligible, within a time period specified by the council, in his or her specialty by an appropriate board recognized by the council or, if a chiropractor, is certified in California workers' compensation evaluation by an appropriate California professional chiropractic association or accredited California college recognized by the council, or, if a psychologist, meets one of the following requirements:

(i) Is board certified in clinical psychology by a board recognized by the council.

(ii) Holds a doctoral degree in psychology from a university or professional school recognized by the council and has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.

(iii) Has not less than five years' postdoctoral experience in the

diagnosis and treatment of emotional and mental disorders, and has served as an agreed medical evaluator on eight or more occasions prior to January 1, 1990.

(B) Served as an agreed medical evaluator on eight or more occasions prior to January 1, 1970.

(4) Does not have a conflict of interest as determined under the regulations promulgated by the administrative director pursuant to subdivision (o).

(5) Meets any additional medical or professional standards adopted pursuant to paragraph (6) of subdivision (j).

(c) The council shall promulgate standards for appointment of physicians who are retired or who hold teaching positions who are exceptionally well qualified to serve as a qualified medical evaluator even though they do not otherwise qualify under paragraph (1) of subdivision (b). In no event shall a physician whose full-time practice is limited to the forensic evaluation of disability be appointed as a qualified medical evaluator under this subdivision.

(d) The qualified medical evaluator, upon request, shall be reappointed if he or she meets the qualifications for appointment and meets all of the following criteria:

(1) Has completed all medical evaluations within a reasonable time after assignment.

(2) Has not had more than five of his or her evaluations which were considered by a workers' compensation judge at a contested hearing rejected by the judge or the appeals board pursuant to this section during the most recent two-year period during which the physician served as a qualified medical evaluator. If the judge or the appeals board rejects the qualified medical evaluator's report on the basis that it fails to meet the minimum standards for those reports established by the Industrial Medical Council or the appeals board, the judge or the appeals board, as the case may be, shall make a specific finding to that effect, and shall give notice to the medical evaluator and to the Industrial Medical Council. Any rejection shall not be counted as one of the five qualifying rejections until the specific finding has become final and time for appeal has expired.

(3) Has completed within the previous 24 months at least 12 hours of continuing education in impairment evaluation or workers' compensation-related medical dispute evaluation approved by the Industrial Medical Council.

(4) Has not been terminated, suspended, placed on probation, or otherwise disciplined by the council during his or her most recent term as a qualified medical evaluator.

If the evaluator does not meet any one of these criteria, the Industrial Medical Council may in its discretion reappoint or deny reappointment according to regulations promulgated by the council. In no event may a physician who does not currently meet the requirements for initial appointment or who has been terminated under subdivision (e) be reappointed.

(e) Except as provided in subdivision (k), the evaluator shall not

be terminated during his or her term of office unless his or her licensing authority has suspended, revoked, or terminated his or her license to practice in California.

(f) The Industrial Medical Council shall furnish a physician, upon request, a written statement of its reasons for termination of or for denying appointment or reappointment as a qualified medical evaluator. Upon receipt of a specific response to the statement of reasons, the Industrial Medical Council shall review its decision not to appoint or reappoint the physician or to terminate the physician and shall notify the physician of its final decision within 60 days after receipt of the physician's response.

(g) The council shall establish agreements with qualified medical evaluators to assure the expeditious evaluation of cases assigned to them for comprehensive medical evaluations.

(h) When the injured worker is not represented by an attorney, the medical director appointed pursuant to Section 122, shall assign three-member panels of qualified medical evaluators within five working days after receiving a request for a panel. If a panel is not assigned within 15 working days, the employee shall have the right to obtain a medical evaluation from any qualified medical evaluator of his or her choice. The medical director shall use a random selection method for assigning panels of qualified medical evaluators. The medical director shall select evaluators who are specialists of the type selected by the employee. The medical director shall advise the employee that he or she should consult with his or her treating physician prior to deciding which type of specialist to request. The Industrial Medical Council shall promulgate a form which shall notify the employee of the physicians selected for his or her panel. The form shall include, for each physician on the panel, the physician's name, address, telephone number, specialty, number of years in practice, and a brief description of his or her education and training, and shall advise the employee that he or she is entitled to receive transportation expenses and temporary disability for each day necessary for the examination. The form shall also state in a clear and conspicuous location and type: "You have the right to consult with an information and assistance officer at no cost to you prior to selecting the doctor to prepare your evaluation, or you may consult with an attorney. If your claim eventually goes to court, the judge will consider the evaluation prepared by the doctor you select to decide your claim." When compiling the list of evaluators from which to select randomly, the medical director shall include all qualified medical evaluators who do not have a conflict of interest in the case, as defined by regulations adopted pursuant to subdivision (o) of the appropriate specialty type as recognized by an appropriate, recognized board within the general geographic area of the employee's residence, and shall have no authority to exclude qualified medical evaluators based on any other criteria. When the medical director determines that an employee has requested an evaluation by a type of specialist which is appropriate for the

employee's injury, but there are not enough qualified medical evaluators of that type within the general geographic area of the employee's residence to establish a three-member panel, the medical director shall include sufficient qualified medical evaluators from other geographic areas and the employer shall pay all necessary travel costs incurred in the event the employee selects an evaluator from another geographic area.

(i) The medical director appointed pursuant to Section 122, shall continuously review the quality of comprehensive medical evaluations and reports prepared by agreed and qualified medical evaluators and the timeliness with which evaluation reports are prepared and submitted. The review shall include, but not be limited to, a review of a random sample of reports submitted to the division, and a review of all reports alleged to be inaccurate or incomplete by a party to a case for which the evaluation was prepared. The medical director shall submit to the administrative director an annual report summarizing the results of the continuous review of medical evaluations and reports prepared by agreed and qualified medical evaluators and make recommendations for the improvement of the system of medical evaluations and determinations.

(j) After public hearing pursuant to Section 5307.4, the council shall promulgate rules and regulations concerning the following medical issues:

(1) Standards governing the timeframes within which medical evaluations shall be prepared and submitted by agreed and qualified medical evaluators. The timeframe for initial medical evaluations to be prepared and submitted shall be no more than 30 days after the evaluator has seen the employee or otherwise commenced the medical evaluation procedure. The council shall develop a written policy governing the provision of extensions of the 30-day period in cases where the evaluator has not received test results or consulting physician's evaluations in time to meet the 30-day deadline. The council shall develop timeframes governing availability of qualified medical evaluators for unrepresented employees under Section 4061. These timeframes shall give the employee the right to the addition of a new evaluator to his or her panel, selected at random, for each evaluator not available to see the employee within a specified period of time, but shall also permit the employee to waive this right for a specified period of time thereafter.

(2) Procedures to be followed by all physicians in evaluating the existence and extent of permanent impairment and limitations resulting from an injury. In order to produce complete, accurate, uniform, and replicable evaluations, the procedures shall require that an evaluation of anatomical loss, functional loss, and the presence of physical complaints be supported, to the extent feasible, by medical findings based on standardized examinations and testing techniques generally accepted by the medical community.

(3) Procedures governing the determination of any disputed medical issues.

(4) Procedures to be used in determining the compensability of psychiatric injury. The procedures shall be in accordance with Section 3208.3 and shall require that the diagnosis of a mental disorder be expressed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

(5) Guidelines for the range of time normally required to perform the following:

(A) A medical-legal evaluation that has not been defined and valued pursuant to Section 5307.6. However, the council may recommend guidelines for evaluations that have been defined and valued pursuant to Section 5307.6 for the purpose of governing the appointment, reappointment, and discipline of qualified medical evaluators. The guidelines shall establish minimum times for patient contact in the conduct of the evaluations, and shall be consistent with regulations adopted pursuant to Section 5307.6.

(B) Any treatment procedures that have not been defined and valued pursuant to Section 5307.1.

(C) Any other evaluation procedure requested by the administrative director, the Insurance Commissioner, or the council itself.

If, without good cause, the council fails to adopt the guidelines required by subparagraph (A) or (B) by March 31, 1994, or fails, without good cause, to adopt a guideline pursuant to subparagraph (C) within six months after a request by the administrative director or the Insurance Commissioner, then the administrative director shall have the authority to adopt the guideline.

(6) Any additional medical or professional standards which a medical evaluator shall meet as a condition of appointment, reappointment, or maintenance in the status of a medical evaluator.

(k) The Industrial Medical Council may, in its discretion, suspend or terminate the privilege of a physician to serve as a qualified medical evaluator if the council, after hearing pursuant to subdivision (*l*), determines, based on substantial evidence, that a qualified medical evaluator:

(1) Has violated any material statutory or administrative duty.

(2) Has failed to follow the medical procedures or qualifications established by the council pursuant to paragraph (2), (3), (4), or (5) of subdivision (j).

(3) Has failed to comply with the timeframe standards established by the council pursuant to subdivision (j).

(4) Has failed to meet the requirements of subdivision (b) or (c).

(5) Has prepared medical-legal evaluations that fail to meet the minimum standards for those reports established by the Industrial Medical Council or the appeals board.

(*l*) The council shall cite the qualified medical evaluator for a

violation listed in subdivision (k) and shall set a hearing on the alleged violation within 30 days of service of the citation on the qualified medical evaluator. In addition to the authority to terminate or suspend the qualified medical evaluator upon finding a violation listed in subdivision (k), the council may, in its discretion, place a qualified medical evaluator on probation subject to appropriate conditions, including ordering continuing education or training. The council shall report to the appropriate licensing board the name of any qualified medical evaluator who is disciplined pursuant to this subdivision.

(m) The council shall terminate from the list of medical evaluators any physician where licensure has been terminated by the relevant licensing board, or who has been convicted of a misdemeanor or felony related to the conduct of his or her medical practice, or of a crime of moral turpitude. The council shall suspend or terminate as a medical evaluator any physician who has been suspended or placed on probation by the relevant licensing board.

(n) Each qualified medical evaluator shall pay a fee, as determined by the Industrial Medical Council, for appointment or reappointment. Any qualified medical evaluator appointed prior to January 1, 1993, shall also pay the same fee as specified herein. These fees shall be based on a sliding scale as established by the council. All revenues from fees paid under this subdivision shall be deposited into the Industrial Medicine Fund, which is hereby created for the administration of the Industrial Medical Council. Moneys paid into the Industrial Medicine Fund for the activities of the Industrial Medical Council shall not be used by any other department or agency or for any purpose other than administration of the council. The funds provided to the council from the Industrial Medicine Fund shall not supplant any funds appropriated to the council from the Workers' Compensation Administration Revolving Fund, the General Fund, or any other governmental source. Any future annual appropriation to the council from the Workers' Compensation Administration Revolving Fund, the General Fund, or any other governmental source shall not be less than the amount appropriated or provided during the 1991–92 fiscal year.

(o) An evaluator may not request or accept any compensation or other thing of value from any source that does or could create a conflict with his or her duties as an evaluator under this code. The administrative director, after consultation with the council and the Commission on Health and Safety and Workers' Compensation, shall adopt regulations to implement this subdivision on or before July 1, 1994.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to specify the requirements for a written examination for qualified medical evaluator at the earliest opportunity, it is necessary

that this act take effect immediately.

CHAPTER 302

An act to amend Section 1067.02 of the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 1067.02 of the Insurance Code is amended to read:

1067.02. (a) This article shall provide coverage for the policies and contracts specified in subdivision (b) to all of the following:

(1) To persons who, regardless of where they reside (except for nonresident certificate holders under group policies or contracts), are the beneficiaries, assignees, or payees of the persons covered under paragraph (2).

(2) To persons who are owners of or certificate holders under those policies or contracts, and who either:

(A) Are residents of this state.

(B) Are not residents, but only under all of the following conditions:

(i) The insurers that issued the policies or contracts are domiciled in this state.

(ii) The insurers never held a license or certificate of authority in the states in which the persons reside.

(iii) The states in which the persons reside have associations similar to the association created by this article.

(iv) The persons are not eligible for coverage by those associations.

(b) (1) This article shall provide coverage to the persons specified in subdivision (a) for direct, nongroup life, health, annuity, and supplemental policies or contracts and for certificates under direct group life, health, annuity, and supplemental policies and contracts, except as limited by this article. Annuity contracts and certificates under group annuity contracts include, but are not limited to, structured settlement agreements, allocated annuity contracts, and any immediate or deferred annuity contracts, and unallocated annuity contracts except those expressly excluded pursuant to subparagraph (D) of paragraph (2) of this subdivision.

(2) This article shall not provide coverage for any of the following:

(A) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policyholder or contractholder.

(B) Any policy or contract of reinsurance, unless assumption certificates have been issued.

(C) Any portion of a policy or contract to the extent that the rate of interest on which it is based exceeds either or both of the following:

(i) The extent to which the rate of interest, averaged over the period of four years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting six percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated, not to go below a minimum of 0 percent.

(ii) The extent to which the rate of interest, on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting six percentage points from Moody's Corporate Bond Yield Average as most recently available, not to go below a minimum of 3 percent.

(D) Guaranteed investment contracts, guaranteed interest contracts, funding agreements, deposit administration contracts, and all other unallocated annuity contracts; provided however, coverage may be provided for unallocated annuity contracts sold by an insurer as to which an order of liquidation, which contained a finding of insolvency and which later became final, was entered by a court of competent jurisdiction in the state of its domicile, after December 20, 1991, but prior to December 20, 1992, and sold to an employer or a trustee or other plan fiduciary in connection with a plan or program of an employer prior to December 20, 1992, for purposes of providing the employees of the employer with deferred compensation or pension benefits and (i) the individual employees have an option to participate or not participate, in whole or in part, in the contract, and (ii) the individual employee contributes from his or her wages some portion of the funds paid into the plan or program.

(E) Any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association, or similar entity under any of the following:

(i) A multiple employer welfare arrangement as defined in Section 514 of the federal Employee Retirement Income Security Act of 1974, as amended.

(ii) A minimum premium group insurance plan.

(iii) A stop-loss group insurance plan.

(iv) An administrative services only contract.

(F) Any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policyholder or contractholder, in connection with the service to or

administration of the policy or contract.

(G) Any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state.

(H) Any annuity issued by a charitable organization that is duly qualified as such under applicable provisions of the Internal Revenue Code, and that is not engaged in the business of insurance as its primary business.

(c) The benefits for which the association may become liable for life insurance and annuity policies shall in no event exceed the lesser of the following:

(1) Eighty percent of the contractual obligations for each policy or contract as modified pursuant to subparagraph (C) of paragraph (2) of subdivision (b), for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer.

(2) (A) With respect to any one life, regardless of the number of policies or contracts:

(i) Two hundred fifty thousand dollars ($250,000) in life insurance death benefits, but not more than one hundred thousand dollars ($100,000) in net cash surrender and net cash withdrawal values for life insurance.

(ii) One hundred thousand dollars ($100,000) in the present value of annuity benefits, including net cash surrender and net cash withdrawal values.

(B) However, in no event shall the association be liable to expend more than two hundred fifty thousand dollars ($250,000) in the aggregate with respect to any one individual under subparagraph (A).

(C) With respect to any one owner of multiple policies of individual life insurance, whether the policyowner is an individual, firm, corporation, or other legal entity, and whether the persons insured are officers, employees, or other persons in whose lives the policyowner has an insurable interest, five million dollars ($5,000,000) in benefits regardless of the number of the policies and contracts held by the owner.

(d) The health insurance benefits for which the association may become liable shall in no event exceed the lesser of the following:

(1) The contractual obligations for which the insurer is liable or for which the insurer would have been liable if it were not an impaired or insolvent insurer.

(2) Two hundred thousand dollars ($200,000) in health insurance benefits; an amount that shall annually increase or decrease based upon the health care cost component of the consumer price index.

(e) An unallocated annuity contract that is not covered by the association may not be offered to an employer, after January 1, 1994, unless prior to being offered to the employer, or the participation by the employee, the insurer or agent has disclosed to the employer, and employee in writing in a conspicuous manner that the contract is not covered by the association.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify and ensure compliance at the earliest possible time with the intent of Chapter 975 of the Statutes of 1993 (Senate Bill 435), it is necessary that this act take effect immediately.

CHAPTER 303

An act to amend Sections 1192.9 and 1210 of the Insurance Code, relating to insurance.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 1192.9 of the Insurance Code is amended to read:

1192.9. Notwithstanding Section 1100, an insurer may make excess funds investments in shares of an open-end diversified management investment company, as defined in the Federal Investment Company Act of 1940, that meets all of the following standards:

(a) It is registered with and reporting to the United States Securities and Exchange Commission.

(b) It is domiciled in the United States with all assets held in the United States by a bank, trust company, or other authorized custodian chartered by the United States, its territories, possessions, or states.

(c) It has assets in excess of one hundred million dollars ($100,000,000).

(d) Its annual management investment fee shall not exceed six-tenths of 1 percent of the average daily asset value, and no other fees or commissions shall be charged to the insurer by any person.

(e) All of its assets are composed of (1) debt obligations issued by or on behalf of the United States, its territories and possessions, the District of Columbia, and states or their political subdivisions, agencies, and instrumentalities, including industrial development obligations; (2) corporate debt obligations other than debt obligations of the insurer or any company affiliated with the insurer; or, (3) accounts, deposits, or obligations of banks or savings and loan associations. The assets shall be required to meet the requirements of and be authorized for investment by the insurer under Articles 3 (commencing with Section 1170) and 4 (commencing with Section 1190) of Chapter 2.

(f) Shares of the management investment company shall be

issued to the insurer or be retained by a bank, trust company, or other entity other than the management investment company which is authorized by the United States to act as a transfer and dividend paying agent for the management investment company.

(g) All shares of the management investment company shall be of the same class with equal rights and privileges. Each share shall be entitled to one vote and to participate equally in dividends and distributions declared by the management investment company and in the net distributable assets of the management investment company on liquidation. When issued, the share shall be fully paid and nonassessable and shall have no preemptive, conversion, or exchange rights.

(h) Shareholders shall be entitled to require the management investment company to redeem all shares.

SEC. 2. Section 1210 of the Insurance Code is amended to read:

1210. (a) Any domestic incorporated insurer, after investing an amount equal to its required minimum paid-in capital in securities specified in Article 3 (commencing with Section 1170), may make such investments as it may see fit in the purchase of, or loans upon, properties and securities other than or in addition to or in excess of those set forth in Articles 2 (commencing with Section 1150), 3 (commencing with Section 1170) and 4 (commencing with Section 1190) of this chapter. Investments under this section shall not exceed, in the aggregate, the lesser of any of the following:

(1) Five percent of the insurer's admitted assets.

(2) Fifty percent of the excess of admitted assets over the sum of capital paid up, liabilities and the surplus required by Section 700.02. The percentage or dollar value of admitted assets and capital paid up and liabilities shall be determined by the insurer's last preceding annual statement of conditions and affairs made as of the preceding December 31st and which has been filed with the commissioner pursuant to law. The investments shall be subject to the provisions of Sections 1153.5, 1154, 1200, 1201, and 1202 as if they were excess funds investments. This section shall apply to an insurer other than life only if the insurer has aggregate capital and surplus of at least ten million dollars ($10,000,000).

(b) An investment originally made by an insurer pursuant to this section which subsequently meets the requirements of an investment contained in Article 2 (commencing with Section 1150), 3 (commencing with Section 1170) or 4 (commencing with Section 1190) may, at the election of the insurer, be considered to be held pursuant to any provision contained in those articles.

(c) Pursuant to the authority conferred by subdivision (a), notwithstanding Section 1100, an insurer may make discretionary investments in shares of an open-end diversified management investment company, as defined in the federal Investment Company Act of 1940, as amended. Nothing in this subdivision is intended to prohibit any other discretionary investment, now or in the future, that might otherwise be made by an insurer, whether expressly

identified in this section or not.

CHAPTER 304

An act to amend Section 2 of Chapter 588 of the Statutes of 1991 and Section 6 of Chapter 1143 of the Statutes of 1982, relating to real property, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) Certain real property located in the County of Sonoma, City of Santa Rosa, consisting of .06 acre of land that borders the Santa Rosa Junior College was acquired by the state at little or no cost.

(b) The state has not expended a significant amount of state funds to improve the land.

(c) Santa Rosa Junior College's use of the land for establishing a child development and child care facility constitutes a public purpose with a broad public benefit.

SEC. 2. The Director of General Services, through the Office of Real Estate and Design Services, shall transfer at fair market value to Santa Rosa Junior College real property located in the County of Sonoma, City of Santa Rosa, consisting of .06 acre of land. The property to be transferred is a strip of land ranging from 10.30 to 12.58 feet in width and is 222 feet in length and lies on the Santa Rosa Junior College side of a common fence that separates property owned by the state and the Santa Rosa Junior College at 1501 Mendocino Avenue.

(a) The net proceeds, if any, received from the disposition of the parcel described shall be deposited in the Armory Fund.

(b) The Director of General Services, as to the property transferred pursuant to this act, shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry.

SEC. 3. Section 2 of Chapter 588 of the Statutes of 1991 is amended to read:

Sec. 2. (a) Notwithstanding any other provision of law, the buildings currently leased by the Mendocino-Lake Community College District, and located at 525 North Main Street in Lakeport, California, and at the Willits Center at 11 Marin Street in Willits Center, are exempt from Article 7 (commencing with Section 81130) and Article 8 (commencing with Section 81160) of Chapter 1 of Part

49 of the Education Code until the date upon which the construction of permanent facilities of the Lake County Center and the Willits Center of Mendocino College is complete or December 31, 2001, whichever date occurs first.

(b) Mendocino-Lake Community College District shall inform students of the risks that may be incurred by the continued occupation of a building that is not in compliance with the earthquake safety standards prescribed by the Field Act, by posting a sign alerting those who use the building of its potentially unsafe conditions.

(c) The amendments to this section by the 1993–94 Regular Session of the Legislature shall become operative only upon adoption of a resolution by the governing board of the Mendocino-Lake Community College District, whereby the district agrees to indemnify, defend, and hold harmless the State of California from any legal claims that may arise from the continued use of buildings specified in subdivision (a).

SEC. 4. Section 6 of Chapter 1143 of the Statutes of 1982, as amended by Section 2 of Chapter 217 of the Statutes of 1989, is amended to read:

Sec. 6. (a) Notwithstanding any other provision of law, the governing board of the Lake Tahoe Community College District may continue to use until June 30, 2001, an existing building leased by the district located at 970 Lodi Avenue, South Lake Tahoe, California. During the period of use authorized by this section, the building shall not be subject to Article 7 (commencing with Section 81130) or Article 8 (commencing with Section 81160) of Chapter 1 of Part 49 of the Education Code.

(b) The Lake Tahoe Community College District shall inform students of the risks that may be incurred by the continued occupation of a building which is not in compliance with the earthquake safety standards prescribed by the Field Act, by posting a sign alerting those who use the building of its potentially unsafe condition.

(c) The amendments to this section by the 1993–94 Regular Session of the Legislature shall become operative only upon adoption of a resolution by the governing board of the Lake Tahoe Community College District whereby the district agrees to indemnify, defend, and hold harmless the State of California from any legal claims that may arise from the continued use of buildings specified in subdivision (a).

SEC. 5. Due to the unique circumstances concerning the parcel of state-owned land located in the City of Santa Rosa that borders the Santa Rosa Junior College and certain school facilities leased by the Mendocino-Lake Community College District and the Lake Tahoe Community College District, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 6. This act is an urgency statute necessary for the

immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that a specified parcel of state-owned land may be transferred at fair market value to the Santa Rosa Junior College and in order that certain Field Act exemptions may be extended until December 31, 2001, without interruption, at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 305

An act to amend Sections 402, 501, and 508 of the Odessa Water District Act (Chapter 533 of the Statutes of 1991), relating to the Odessa Water District.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 402 of the Odessa Water District Act (Chapter 533 of the Statutes of 1991) is amended to read:

Sec. 402. The boundaries of the district are the corporate boundaries of the City of Barstow, California. If the City of Barstow annexes territory to, or detaches territory from, its boundaries, that territory shall be deemed annexed to, or detached from, the district, as the case may be, so that the boundaries of the City of Barstow and the boundaries of the district remain coterminous. Nothing in this section exempts the district or the City of Barstow from complying with the Cortese-Knox Local Government Reorganization Act of 1985 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code).

SEC. 2. Section 501 of the Odessa Water District Act (Chapter 533 of the Statutes of 1991) is amended to read:

Sec. 501. The board consists of the members of the City Council of the City of Barstow. The board is authorized to adopt reasonable rules and regulations to facilitate the exercise of its powers and duties.

SEC. 3. Section 508 of the Odessa Water District Act (Chapter 533 of the Statutes of 1991) is amended to read:

Sec. 508. The district shall determine which projects or works of improvement shall be carried out and shall determine, as to each project or work of improvement, that it is for the common benefit of the district as a whole.

CHAPTER 306

An act to amend Section 1104.9 of the Insurance Code, relating to insurance.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 1104.9 of the Insurance Code is amended to read:

1104.9. (a) (1) As used in this section, "qualified custodian" means: (A) commercial banks (as defined in Section 105 of the Financial Code), savings and loan associations (as defined in Section 5102 of the Financial Code), and trust companies (other than trust departments of title insurance companies), or any entity approved by the commissioner as a qualified custodian; (B) that is domiciled and has a principal place of business in this state; and (C) that either has a net worth of at least one hundred million dollars ($100,000,000) or is able to demonstrate to the satisfaction of the commissioner that it is financially secure. The commissioner may consider, among other factors, evidence of the following in order to determine whether a custodian is financially secure for the purpose of this subdivision: (i) its obligations under an agreement approved by the commissioner pursuant to subdivision (c) are guaranteed by its parent holding company, (ii) its parent holding company has a net worth of at least one hundred million dollars ($100,000,000), or (iii) it is a member of a holding company system with a net worth of at least one hundred million dollars ($100,000,000).

(2) As used in this section, "qualified depository" means an entity that is located in this state or a reciprocal state and is (A) a depository that provides for the long-term immobilization of securities or a clearing corporation that is also a depository, and that in either case has been approved by or registered with the Securities and Exchange Commission, (B) a Federal Reserve bank, or (C) an entity approved by the commissioner as a qualified depository.

A "qualified depository" may also include an entity that is located outside the United States, which entity shall be a securities depository and clearing agency, incorporated or organized under the laws of a country other than the United States, (i) that operates a transnational system for securities or equivalent book entries (specifically Euroclear and Cedel, or successors to all or substantially all of their operations), or (ii) that operates a central system for securities or equivalent book entries, but solely for securities issued by, or by entities within, the country in which the securities depository and clearing agency is incorporated or organized, provided, that the depository meets all qualifying requirements imposed by this section upon Euroclear or Cedel.

(3) As used in this section, "qualified subcustodian" means an entity located in this state or a reciprocal state (A) that holds securities of the domestic insurer, and maintains an account through which the securities are held, in this state or a reciprocal state and (B) that has a net worth of at least one hundred million dollars ($100,000,000) or is able to demonstrate to the satisfaction of the commissioner that it is financially secure. The qualified subcustodian shall be: (A) a commercial bank, a savings and loan association, or a trust company (other than trust departments of title insurance companies); (B) a subsidiary of a qualified custodian; or (C) any entity approved by the commissioner as a qualified subcustodian. The commissioner may consider, among other factors, evidence of the following in order to determine whether a subcustodian is financially secure for the purpose of this subdivision: (i) its obligations are guaranteed by its parent company, (ii) its parent holding company has a net worth of at least one hundred million dollars ($100,000,000), or (iii) it is a member of a holding company system with a net worth of at least one hundred million dollars ($100,000,000). A "qualified subcustodian" may also include an entity that is located outside the United States, that is used by the domestic insurer for the purpose of obtaining access to a qualified depository located outside the United States. The qualified foreign subcustodian shall have a net worth of at least one hundred million dollars ($100,000,000) or is able to demonstrate to the satisfaction of the commissioner that it is financially secure, and shall be: (A) a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated by that country's government or an agency thereof, and that has shareholders' equity in excess of two hundred million dollars ($200,000,000), whether in United States dollars or the equivalent of United States dollars, as of the close of its most recently completed fiscal year; (B) a majority-owned direct or indirect subsidiary of a qualified United States bank or bank holding company, which subsidiary is incorporated or organized under the laws of a country other than the United States and has shareholders' equity in excess of one hundred million dollars ($100,000,000), whether in United States dollars or the equivalent of United States dollars, as of the close of its most recently completed fiscal year.

(4) As used in this section, "subsidiary" means: (A) an entity all of whose voting securities (other than director qualifying shares, if any) are owned, directly or indirectly, by a qualified custodian; or (B) any affiliated entity approved by the commissioner as a subsidiary of a qualified custodian. For the purpose of this section, an affiliated entity means an entity that (A) controls or is controlled, either directly or indirectly or through one or more intermediaries by a qualified custodian or (B) is under the common control, directly or indirectly, as or with a qualified custodian.

(5) As used in this section, "entity approved by the commissioner as a qualified custodian," "entity approved by the commissioner as

a qualified depository," "entity approved by the commissioner as a qualified subcustodian," and "entity approved by the commissioner as a subsidiary of a qualified custodian" mean those entities that meet the conditions or standards established by the commissioner. The commissioner shall charge and collect in advance a one-time fee of one thousand five hundred dollars ($1,500) to review an application for approval of any entity pursuant to this section.

(6) As used in this section, "reciprocal state" has the same meaning as in subdivision (f) of Section 1064.1.

(7) As used in this section, "moneys" means cash held incidental to securities transactions occurring in the ordinary course of business with respect to securities held pursuant to the custodial agreements under this section.

(8) (A) Except as provided in subparagraph (B), as used in this section, "insurer," "domestic insurer," and "domestic admitted insurer" mean any insurer, other than a domestic life insurer that is incorporated or which has its principal place of business in this state. Except as provided in subparagraph (B), no portion of this section shall apply to domestic life insurers nor shall this section affect the interpretation of any other portion of this code with respect to domestic life insurers nor is it intended to create a precedent for the application of its provisions to those insurers. However, the exclusion of domestic life insurers from this section shall not be construed to diminish the commissioner's existing authority over those insurers under any other provision of this code.

(B) Domestic life insurers that are wholly owned by any insurer other than a domestic life insurer or are part of an insurance holding company system whose other insurer affiliates are not domestic life insurers may elect to be subject to this section by affirmatively stating that election in the statement otherwise required to be filed by that system pursuant to Section 1215.4.

(b) Notwithstanding Section 1104.1, a domestic admitted insurer may maintain its securities and moneys in a reciprocal state, subject to the requirements of this section, through a custodian account located in California in or with a qualified custodian, and that qualified custodian may maintain those securities or moneys in a qualified depository or qualified subcustodian, either or both of which may be located in a reciprocal state. In addition, a domestic insurer that has foreign investments or any other investments that require delivery outside of the United States upon sale or maturity that qualify under Section 1240, 1241, or 10506, or any other provision of this code may maintain those securities or moneys in or with a qualified depository located in a jurisdiction outside the United States. However, the aggregate amount of general account investments so deposited shall not exceed the lesser of 5 percent of the total admitted assets of the insurer or 25 percent of the excess of admitted assets over the sum of paid up capital, liabilities, and surplus required by Section 700.02. However, not more that 50 percent of that amount of assets that an insurer is authorized to invest pursuant

to Section 1241 may be maintained in a qualified depository as defined in clause (ii) of paragraph (2) of subdivision (a) of Section 1104.9 and not more than 12.5 percent of that amount of assets that an insurer is authorized to invest pursuant to Section 1241 may be maintained in any single country in a qualified depository as defined in clause (ii) of paragraph (2) of subdivision (a) of Section 1104.9. The percentage or dollar value of admitted assets and paid up capital and liabilities shall be determined by the insurer's last preceding annual statement of conditions and affairs made as of the preceding December 31 that has been filed with the commissioner pursuant to law. No broker or agent, as defined in the Federal Securities Exchange Act of 1934 (15 U.S.C.A. Sec. 78c et seq.), may serve as a qualified custodian, qualified subcustodian, or qualified depository under this section. However, no otherwise qualified custodian or subcustodian shall be disqualified on account of its activities as a broker or dealer, as so defined, when the activities are incidental to its custodial or other business.

(c) No securities shall be deposited in or with a qualified custodian, qualified depository, or qualified subcustodian except as authorized by an agreement between the insurer and the qualified custodian, which agreement is satisfactory to and has been approved by the commissioner. The agreement shall require that the securities be held by the qualified custodian for the benefit of the insurer and that the books and records of the qualified custodian shall so designate. The agreement shall further require that beneficial title to the securities shall remain in the insurer and shall require that the qualified subcustodian and qualified depository be the agents of the qualified custodian. The agreement shall also specifically require that the qualified custodian shall exercise the standard of care of a professional custodian engaged in the banking or trust company industry and having professional expertise in financial and securities processing transactions and custody would observe in these affairs. This section shall not affect the burden of proof under applicable law with respect to the assertion of liability in any claim, action, or dispute alleging any breach of, or failure to observe, that standard of care.

(d) No agreement between the qualified custodian and the insurer shall be approved by the commissioner unless the qualified custodian agrees therein to comply with this section. Except when the agreement is submitted in conjunction with an application for an original certificate of authority or variable contract qualification, a fee of five hundred dollars ($500) shall be paid to the commissioner at the time of filing the agreement for approval. However, no fee shall be required if the form of the agreement has been previously submitted for approval and approved by the commissioner as certified by the insurer and qualified custodian submitting the agreement to the commissioner. The agreement shall be deemed approved unless, within 60 days after receipt by the commissioner of that agreement and any required filing fee, the commissioner has

disapproved the agreement in writing citing specific reasons for disapproval.

(e) Notwithstanding the maintenance of securities with an out-of-state qualified depository or qualified subcustodian pursuant to agreement, if the commissioner has reasonable cause to believe that the domestic insurer (1) is conducting its business and affairs in such a manner as to threaten to render it insolvent, or (2) is in a hazardous condition or is conducting its business and affairs in a manner that is hazardous to its policyholders, creditors, or the public, or (3) has committed or is committing or has engaged or is engaging in any act that would constitute grounds for rendering it subject to conservation or liquidation proceedings, or if the commissioner determines that irreparable loss and injury to the property and business of the domestic insurer has occurred or may occur unless the commissioner acts immediately, then the commissioner may, without hearing, order the insurer and the qualified custodian promptly to effect the transfer of the securities back to a qualified custodian, qualified subcustodian, or qualified depository located in this state from any qualified depository or qualified subcustodian located outside of this state (the transfer order). Upon receipt of the transfer order, the qualified custodian shall promptly effect the return of the securities. Notwithstanding the pendency of any hearing or action provided for in subdivision (f), the transfer order shall be complied with by those persons subject to that order. Any challenge to the validity of the transfer order shall be made in accordance with subdivision (f). It shall be the responsibility of both the insurer and the qualified custodian to oversee that compliance with the transfer order is completed as expeditiously as possible. Upon receipt of a transfer order, there shall be no trading of the securities without specific instructions from the commissioner until the securities are received in this state, except to the extent trading transactions are in process on the day the transfer order is received by the insurer and the failure to complete the trade may result in loss to the insurer's account. Issuance of a transfer order shall not affect the qualified custodian's liabilities with regard to the securities that are the subject of the order.

(f) At the same time the transfer order is served, the commissioner shall issue and also serve upon the insurer a notice of hearing to be held at a time and place fixed therein which shall not be less than 20 nor more than 45 days after the service thereof. Upon request of the insurer and agreement of the department, the hearing may be held within a shorter time but in no event less than 10 days after the service of the notice of hearing. The transfer order and notice of hearing may be served by certified mail, express mail, messenger, telegram, or any other means calculated to give prompt actual notice to (1) the California office of the insurer designated in the agreement, its home office as shown on its most recently filed annual or quarterly statement, or its California agent for service of process; and (2) the California office of the qualified custodian

designated in the agreement. If, as a result of the hearing, any of the statements as to conduct, conditions, or grounds for the transfer order are found to be true, or if other conditions or grounds are discovered or become known at the hearing and are found to be true, the commissioner shall affirm the transfer order and may make additional order or orders, pertaining to the transfer order, as may be reasonably necessary.

The insurer subject to the transfer order, shall be entitled to judicial review in the state of the commissioner's order issued as a result of the hearing.

Alternatively, at any time prior to the commencement of the hearing on the transfer order, the insurer may waive the hearing and have judicial review in this state of the transfer order by petition for writ of mandate and declaratory relief without first exhausting administrative remedies or procedures. In that event the insurer shall not be entitled to any extraordinary remedies prior to trial.

No person other than the insurer shall have standing at the hearing by the commissioner or for any judicial review of the transfer order.

CHAPTER 307

An act to amend Sections 2355, 2356, and 2357 of, to repeal and add Article 3 (commencing with Section 2400) of Chapter 2 of Title 9 of Part 4 of Division 3 of, to repeal Article 4 (commencing with Section 2410) and Article 5 (commencing with Section 2430) of Chapter 2 of Title 9 of Part 4 of Division 3 of, and to repeal Chapter 3 (commencing with Section 2450), Chapter 3.5 (commencing with Section 2475), Chapter 4 (commencing with Section 2500), and Chapter 5 (commencing with Section 2510) of Title 9 of Part 4 of Division 3 of, the Civil Code, to amend Section 6725 of the Financial Code, and to amend Section 5204 of, to amend the heading of Chapter 5 (commencing with Section 3700) of Part 8 of Division 4 of, to add Sections 3721 and 3722 to, and to add Division 4.5 (commencing with Section 4000) to, the Probate Code, relating to powers of attorney.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 2355 of the Civil Code is amended to read:

2355. An agency is terminated, as to every person having notice thereof, by any of the following:

(a) The expiration of its term.

(b) The extinction of its subject.

(c) The death of the agent.

(d) The agent's renunciation of the agency.

(e) The incapacity of the agent to act as such.

SEC. 2. Section 2356 of the Civil Code is amended to read:

2356. (a) Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated by any of the following:

(1) Its revocation by the principal.

(2) The death of the principal.

(3) The incapacity of the principal to contract.

(b) Notwithstanding subdivision (a), any bona fide transaction entered into with an agent by any person acting without actual knowledge of the revocation, death, or incapacity shall be binding upon the principal, his or her heirs, devisees, legatees, and other successors in interest.

(c) Nothing in this section shall affect the provisions of Section 1216.

(d) With respect to a proxy given by a person to another person relating to the exercise of voting rights, to the extent the provisions of this section conflict with or contravene any other provisions of the statutes of California pertaining to the proxy, the latter provisions shall prevail.

SEC. 3. Section 2357 of the Civil Code is amended to read:

2357. For the purposes of subdivision (b) of Section 2356, in the case of a principal who is an absentee as defined in Section 1403 of the Probate Code, a person shall be deemed to be without actual knowledge of:

(a) The principal's death or incapacity while the absentee continues in missing status and until the person receives notice of the determination of the death of the absentee by the secretary concerned or the head of the department or agency concerned or the delegate of the secretary or head.

(b) Revocation by the principal during the period described in subdivision (a).

SEC. 4. Article 3 (commencing with Section 2400) of Chapter 2 of Title 9 of Part 4 of Division 3 of the Civil Code is repealed.

SEC. 5. Article 3 (commencing with Section 2400) is added to Chapter 2 of Title 9 of Part 4 of Division 3 of the Civil Code, to read:

Article 3. Powers of Attorney Under Probate Code

2400. Powers of attorney are governed by the Power of Attorney Law (Division 4.5 (commencing with Section 4000) of the Probate Code) to the extent provided in that law.

SEC. 6. Article 4 (commencing with Section 2410) of Chapter 2 of Title 9 of Part 4 of Division 3 of the Civil Code is repealed.

SEC. 7. Article 5 (commencing with Section 2430) of Chapter 2 of Title 9 of Part 4 of Division 3 of the Civil Code is repealed.

SEC. 8. Chapter 3 (commencing with Section 2450) of Title 9 of Part 4 of Division 3 of the Civil Code is repealed.

SEC. 9. Chapter 3.5 (commencing with Section 2475) of Title 9

of Part 4 of Division 3 of the Civil Code is repealed.

SEC. 10. Chapter 4 (commencing with Section 2500) of Title 9 of Part 4 of Division 3 of the Civil Code is repealed.

SEC. 11. Chapter 5 (commencing with Section 2510) of Title 9 of Part 4 of Division 3 of the Civil Code is repealed.

SEC. 12. Section 6725 of the Financial Code is amended to read:

6725. (a) Notwithstanding any other provision of law, an association or federal association may continue to recognize the authority of an attorney-in-fact authorized in writing to manage or to make withdrawals either in whole or in part from the savings account of a holder, whether minor or adult, until it receives written notice or is on actual notice of the revocation of authority, whether the revocation is express or by operation of law.

(b) Except as provided in Division 4.5 (commencing with Section 4000) of the Probate Code, written notice of the death or adjudication of incompetency of the account holder that is delivered to the office where the account is maintained shall constitute written notice of revocation of the authority of the attorney-in-fact.

(c) No association or federal association shall be liable for damages, penalty, or tax by reason of any payment made pursuant to this section.

SEC. 13. The heading of Chapter 5 (commencing with Section 3700) of Part 8 of Division 4 of the Probate Code is amended to read:

CHAPTER 5. PROPERTY OF ABSENT FEDERAL PERSONNEL

SEC. 14. Section 3721 is added to the Probate Code, to read:

3721. For the purposes of Chapter 5 (commencing with Section 4300) of Part 2 of Division 4.5, in the case of a principal who is an absentee, an attorney-in-fact or third person shall be deemed to be without actual knowledge of the following:

(a) The principal's death or incapacity while the absentee continues in missing status and until the attorney-in-fact or third person receives notice of the determination of the absentee's death by the secretary concerned or the head of the department or agency concerned or the delegate of the secretary or head.

(b) Revocation by the principal during the period described in subdivision (a).

SEC. 15. Section 3722 is added to the Probate Code, to read:

3722. If after the absentee executes a power of attorney, the principal's spouse who is the attorney-in-fact commences a proceeding for dissolution, annulment, or legal separation, or a legal separation is ordered, the attorney-in-fact's authority is revoked. This section is in addition to the provisions of Section 4154.

SEC. 16. Division 4.5 (commencing with Section 4000) is added to the Probate Code, to read:

DIVISION 4.5. POWERS OF ATTORNEY

PART 1. DEFINITIONS AND GENERAL PROVISIONS

CHAPTER 1. SHORT TITLE AND DEFINITIONS

4000. This division may be cited as the Power of Attorney Law.

4001. Sections 4124, 4125, 4126, 4127, 4206, 4304, and 4305 may be cited as the Uniform Durable Power of Attorney Act.

4010. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this division.

4014. (a) "Attorney-in-fact" means a person granted authority to act for the principal in a power of attorney, regardless of whether the person is known as an attorney-in-fact or agent, or by some other term.

(b) "Attorney-in-fact" includes a successor or alternate attorney-in-fact and a person delegated authority by an attorney-in-fact.

4018. "Durable power of attorney" means a power of attorney that satisfies the requirements for durability provided in Section 4124.

4022. "Power of attorney" means a written instrument, however denominated, that is executed by a natural person having the capacity to contract and that grants authority to an attorney-in-fact. A power of attorney may be durable or nondurable.

4026. "Principal" means a natural person who executes a power of attorney.

4030. "Springing power of attorney" means a power of attorney that by its terms becomes effective at a specified future time or on the occurrence of a specified future event or contingency, including, but not limited to, the subsequent incapacity of the principal. A springing power of attorney may be a durable power of attorney or a nondurable power of attorney.

4034. "Third person" means any person other than the principal or attorney-in-fact.

CHAPTER 2. GENERAL PROVISIONS

4050. (a) This division applies to the following:

(1) Durable powers of attorney.

(2) Statutory form powers of attorney under Part 3 (commencing with Section 4400).

(3) Durable powers of attorney for health care under Part 4 (commencing with Section 4600).

(4) Any other power of attorney that incorporates or refers to this division or the provisions of this division.

(b) This division does not apply to the following:

(1) A power of attorney to the extent that the authority of the attorney-in-fact is coupled with an interest in the subject of the

power of attorney.

(2) Reciprocal or interinsurance exchanges and their contracts, subscribers, attorneys-in-fact, agents, and representatives.

(3) A proxy given by an attorney-in-fact to another person to exercise voting rights.

(c) This division is not intended to affect the validity of any instrument or arrangement that is not described in subdivision (a).

4051. Except where this division provides a specific rule, the general law of agency, including Article 2 (commencing with Section 2019) of Chapter 2 of Title 6 of, and Title 9 (commencing with Section 2295) of, Part 4 of Division 3 of the Civil Code, applies to powers of attorney.

4052. (a) If a power of attorney provides that the Power of Attorney Law of this state governs the power of attorney or otherwise indicates the principal's intention that the Power of Attorney Law of this state governs the power of attorney, this division governs the power of attorney and applies to acts and transactions of the attorney-in-fact in this state or outside this state where any of the following conditions is satisfied:

(1) The principal or attorney-in-fact was domiciled in this state when the principal executed the power of attorney.

(2) The authority conferred on the attorney-in-fact relates to property, acts, or transactions in this state.

(3) The acts or transactions of the attorney-in-fact occurred or were intended to occur in this state.

(4) The principal executed the power of attorney in this state.

(5) There is otherwise a reasonable relationship between this state and the subject matter of the power of attorney.

(b) If subdivision (a) does not apply to the power of attorney, this division governs the power of attorney and applies to the acts and transactions of the attorney-in-fact in this state where either of the following conditions is satisfied:

(1) The principal was domiciled in this state when the principal executed the power of attorney.

(2) The principal executed the power of attorney in this state.

(c) A power of attorney described in this section remains subject to this division despite a change in domicile of the principal or the attorney-in-fact, or the removal from this state of property that was the subject of the power of attorney.

4053. A durable power of attorney executed in another state or jurisdiction in compliance with the law of that state or jurisdiction or the law of this state is valid and enforceable in this state to the same extent as a durable power of attorney executed in this state, regardless of whether the principal is a domiciliary of this state.

4054. Except as otherwise provided by statute:

(a) On and after January 1, 1995, this division applies to all powers of attorney regardless of whether they were executed before, on, or after January 1, 1995.

(b) This division applies to all proceedings concerning powers of

attorney commenced on or after January 1, 1995.

(c) This division applies to all proceedings concerning powers of attorney commenced before January 1, 1995, unless the court determines that application of a particular provision of this division would substantially interfere with the effective conduct of the proceedings or the rights of the parties and other interested persons, in which case the particular provision of this division does not apply and prior law applies.

PART 2. POWERS OF ATTORNEY GENERALLY

CHAPTER 1. GENERAL PROVISIONS

4100. This part applies to all powers of attorney under this division, subject to any special rules applicable to statutory form powers of attorney under Part 3 (commencing with Section 4400) or durable powers of attorney for health care under Part 4 (commencing with Section 4600).

4101. (a) Except as provided in subdivision (b), the principal may limit the application of any provision of this division by an express statement in the power of attorney or by providing an inconsistent rule in the power of attorney.

(b) A power of attorney may not limit either the application of a statute specifically providing that it is not subject to limitation in the power of attorney or a statute concerning any of the following:

(1) Warnings or notices required to be included in a power of attorney.

(2) Operative dates of statutory enactments or amendments.

(3) Execution formalities.

(4) Qualifications of witnesses.

(5) Qualifications of attorneys-in-fact.

(6) Protection of third persons from liability.

4102. Notwithstanding Section 4128:

(a) Except as provided in subdivision (b), on and after January 1, 1995, a printed form of a durable power of attorney may be sold or otherwise distributed if it satisfies the requirements of former Section 2510.5 of the Civil Code.

(b) A printed form of a durable power of attorney printed on or after January 1, 1986, that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall comply with former Section 2510 of the Civil Code or with Section 4128 of this code.

(c) A durable power of attorney executed on or after January 1, 1995, using a printed form that complies with subdivision (b) of former Section 2400 of the Civil Code, as enacted by Chapter 511 of the Statutes of 1981, or with former Section 2510 of the Civil Code, is as valid as if it had been executed using a printed form that complies with Section 4128 of this code.

CHAPTER 2. CREATION AND EFFECT OF POWERS OF ATTORNEY

4120. A natural person having the capacity to contract may execute a power of attorney.

4121. A power of attorney is legally sufficient if all of the following requirements are satisfied:

(a) The power of attorney contains the date of its execution.

(b) The power of attorney is signed either (1) by the principal or (2) in the principal's name by some other person in the principal's presence and at the principal's direction.

(c) The power of attorney is either (1) acknowledged before a notary public or (2) signed by at least two witnesses who satisfy the requirements of Section 4122.

4122. If the power of attorney is signed by witnesses, as provided in Section 4121, the following requirements shall be satisfied:

(a) The witnesses shall be adults.

(b) The attorney-in-fact may not act as a witness.

(c) Each witness signing the power of attorney shall witness either the signing of the instrument by the principal or the principal's acknowledgment of the signature or the power of attorney.

(d) In the case of a durable power of attorney for health care, the additional requirements of Section 4701.

4123. (a) In a power of attorney, a principal may grant authority to an attorney-in-fact to act on the principal's behalf with respect to all lawful subjects and purposes or with respect to one or more express subjects or purposes. The attorney-in-fact may be granted authority with regard to the principal's property, personal care, health care, or any other matter.

(b) With regard to property matters, a power of attorney may grant authority to make decisions concerning all or part of the principal's real and personal property, whether owned by the principal at the time of the execution of the power of attorney or thereafter acquired or whether located in this state or elsewhere, without the need for a description of each item or parcel of property.

(c) With regard to personal care, a power of attorney may grant authority to make decisions relating to the personal care of the principal, including, but not limited to, determining where the principal will live, providing meals, hiring household employees, providing transportation, handling mail, and arranging recreation and entertainment.

(d) With regard to health care, a power of attorney may grant authority to make health care decisions, both before and after the death of the principal, as provided in Part 4 (commencing with Section 4600).

4124. A durable power of attorney is a power of attorney by which a principal designates another person as attorney-in-fact in writing and the power of attorney contains any of the following statements:

(a) "This power of attorney shall not be affected by subsequent incapacity of the principal."

(b) "This power of attorney shall become effective upon the incapacity of the principal."

(c) Similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity.

4125. All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period of incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal had capacity.

4126. (a) A principal may nominate, by a durable power of attorney, a conservator of the person or estate or both, or a guardian of the person or estate or both, for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced.

(b) If the protective proceedings are conservatorship proceedings in this state, the nomination has the effect provided in Section 1810 and the court shall give effect to the most recent writing executed in accordance with Section 1810, whether or not the writing is a durable power of attorney.

4127. Unless a power of attorney states a time of termination, the authority of the attorney-in-fact is exercisable notwithstanding any lapse of time since execution of the power of attorney.

4128. (a) Subject to subdivision (b), a printed form of a durable power of attorney that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall contain, in not less than 10-point boldface type or a reasonable equivalent thereof, the following warning statement:

Notice to Person Executing Durable Power of Attorney

A durable power of attorney is an important legal document. By signing the durable power of attorney, you are authorizing another person to act for you, the principal. Before you sign this durable power of attorney, you should know these important facts:

Your agent (attorney-in-fact) has no duty to act unless you and your agent agree otherwise in writing.

This document gives your agent the powers to manage, dispose of, sell, and convey your real and personal property, and to use your property as security if your agent borrows money on your behalf.

Your agent will have the right to receive reasonable payment for services provided under this durable power of attorney unless you provide otherwise in this power of attorney.

The powers you give your agent will continue to exist for your entire lifetime, unless you state that the durable power of attorney will last for a shorter period of time or unless you otherwise terminate the durable power of attorney. The powers you give your

agent in this durable power of attorney will continue to exist even if you can no longer make your own decisions respecting the management of your property.

You can amend or change this durable power of attorney only by executing a new durable power of attorney or by executing an amendment through the same formalities as an original. You have the right to revoke or terminate this durable power of attorney at any time, so long as you are competent.

This durable power of attorney must be dated and must be acknowledged before a notary public or signed by two witnesses. If it is signed by two witnesses, they must witness either (1) the signing of the power of attorney or (2) the principal's signing or acknowledgment of his or her signature. A durable power of attorney that may affect real property should be acknowledged before a notary public so that it may easily be recorded.

You should read this durable power of attorney carefully. When effective, this durable power of attorney will give your agent the right to deal with property that you now have or might acquire in the future. The durable power of attorney is important to you. If you do not understand the durable power of attorney, or any provision of it, then you should obtain the assistance of an attorney or other qualified person.

(b) Nothing in subdivision (a) invalidates any transaction in which a third person relied in good faith on the authority created by the durable power of attorney.

(c) This section does not apply to the following:

(1) A statutory form power of attorney under Part 3 (commencing with Section 4400).

(2) A durable power of attorney for health care under Part 4 (commencing with Section 4600).

4129. (a) In a springing power of attorney, the principal may designate one or more persons who, by a written declaration under penalty of perjury, have the power to determine conclusively that the specified event or contingency has occurred. The principal may designate the attorney-in-fact or another person to perform this function, either alone or jointly with other persons.

(b) A springing power of attorney containing the designation described in subdivision (a) becomes effective when the person or persons designated in the power of attorney execute a written declaration under penalty of perjury that the specified event or contingency has occurred, and any person may act in reliance on the written declaration without liability to the principal or to any other person, regardless of whether the specified event or contingency has actually occurred.

(c) This section applies to a power of attorney whether executed before, on, or after January 1, 1991, if the power of attorney contains the designation described in subdivision (a).

(d) This section does not provide the exclusive method by which

a power of attorney may be limited to take effect on the occurrence of a specified event or contingency.

4130. (a) If a principal grants inconsistent authority to one or more attorneys-in-fact in two or more powers of attorney, the authority granted last controls to the extent of the inconsistency.

(b) This section is not subject to limitation in the power of attorney.

CHAPTER 3. MODIFICATION AND REVOCATION OF POWERS OF ATTORNEY

4150. (a) A principal may modify a power of attorney as follows:

(1) In accordance with the terms of the power of attorney.

(2) By an instrument executed in the same manner as a power of attorney may be executed.

(b) An attorney-in-fact or third person who does not have notice of the modification is protected from liability as provided in Chapter 4 (commencing with Section 4300).

4151. (a) A principal may revoke a power of attorney as follows:

(1) In accordance with the terms of the power of attorney.

(2) By a writing. This paragraph is not subject to limitation in the power of attorney.

(b) An attorney-in-fact or third person who does not have notice of the revocation is protected from liability as provided in Chapter 4 (commencing with Section 4300).

4152. (a) Subject to subdivision (b), the authority of an attorney-in-fact under a power of attorney is terminated by any of the following events:

(1) In accordance with the terms of the power of attorney.

(2) Extinction of the subject or fulfillment of the purpose of the power of attorney.

(3) Revocation of the attorney-in-fact's authority, as provided in Section 4153.

(4) Death of the principal, except as to specific authority permitted by statute to be exercised after the principal's death.

(5) Removal of the attorney-in-fact.

(6) Resignation of the attorney-in-fact.

(7) Incapacity of the attorney-in-fact, except that a temporary incapacity suspends the attorney-in-fact's authority only during the period of the incapacity.

(8) Dissolution or annulment of the marriage of the attorney-in-fact and principal, as provided in Section 4154.

(9) Death of the attorney-in-fact.

(b) An attorney-in-fact or third person who does not have notice of an event that terminates the power of attorney or the authority of an attorney-in-fact is protected from liability as provided in Chapter 4 (commencing with Section 4300).

4153. (a) The authority of an attorney-in-fact under a power of attorney may be revoked as follows:

(1) In accordance with the terms of the power of attorney.

(2) Where the principal informs the attorney-in-fact orally or in writing that the attorney-in-fact's authority is revoked or when and under what circumstances it is revoked. This paragraph is not subject to limitation in the power of attorney.

(3) Where the principal's legal representative, with approval of the court as provided in Section 4206, informs the attorney-in-fact in writing that the attorney-in-fact's authority is revoked or when and under what circumstances it is revoked. This paragraph is not subject to limitation in the power of attorney.

(b) An attorney-in-fact or third person who does not have notice of the revocation is protected from liability as provided in Chapter 4 (commencing with Section 4300).

4154. (a) If after executing a power of attorney the principal's marriage to the attorney-in-fact is dissolved or annulled, the principal's designation of the former spouse as an attorney-in-fact is revoked.

(b) If the attorney-in-fact's authority is revoked solely by subdivision (a), it is revived by the principal's remarriage to the attorney-in-fact.

4155. (a) Subject to subdivision (b), the authority of an attorney-in-fact under a nondurable power of attorney is terminated by the incapacity of the principal to contract.

(b) An attorney-in-fact or third person who does not have notice of the incapacity of the principal is protected from liability as provided in Chapter 4 (commencing with Section 4300).

(c) This section is not subject to limitation in the power of attorney.

CHAPTER 4. ATTORNEYS-IN-FACT

Article 1. Qualifications and Authority of Attorneys-in-Fact

4200. Only a person having the capacity to contract is qualified to act as an attorney-in-fact.

4201. Designating an unqualified person as an attorney-in-fact does not affect the immunities of third persons nor relieve the unqualified person of any applicable duties to the principal or the principal's successors.

4202. (a) A principal may designate more than one attorney-in-fact in one or more powers of attorney.

(b) Authority granted to two or more attorneys-in-fact is exercisable only by their unanimous action.

(c) If a vacancy occurs, the remaining attorneys-in-fact may exercise the authority conferred as if they are the only attorneys-in-fact.

(d) If an attorney-in-fact is unavailable because of absence, illness, or other temporary incapacity, the other attorneys-in-fact may exercise the authority under the power of attorney as if they are the

only attorneys-in-fact, where necessary to accomplish the purposes of the power of attorney or to avoid irreparable injury to the principal's interests.

(e) An attorney-in-fact is not liable for the actions of other attorneys-in-fact, unless the attorney-in-fact participates in, knowingly acquiesces in, or conceals a breach of fiduciary duty committed by another attorney-in-fact.

4203. (a) A principal may designate one or more successor attorneys-in-fact to act if the authority of a predecessor attorney-in-fact terminates.

(b) The principal may grant authority to another person, designated by name, by office, or by function, including the initial and any successor attorneys-in-fact, to designate at any time one or more successor attorneys-in-fact. This subdivision does not apply to a durable power of attorney for health care under Part 4 (commencing with Section 4600).

(c) A successor attorney-in-fact is not liable for the actions of the predecessor attorney-in-fact.

4204. An attorney-in-fact is entitled to reasonable compensation for services rendered to the principal as attorney-in-fact and to reimbursement for reasonable expenses incurred as a result of acting as attorney-in-fact.

4205. (a) An attorney-in-fact may revocably delegate authority to perform mechanical acts to one or more persons qualified to exercise the authority delegated.

(b) The attorney-in-fact making a delegation remains responsible to the principal for the exercise or nonexercise of the delegated authority.

4206. (a) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator of the estate, guardian of the estate, or other fiduciary charged with the management of all of the principal's property or all of the principal's property except specified exclusions, the attorney-in-fact is accountable to the fiduciary as well as to the principal. Except as provided in subdivision (b), the fiduciary has the same power to revoke or amend the durable power of attorney that the principal would have had if not incapacitated, subject to any required court approval.

(b) If a conservator of the estate is appointed by a court of this state, the conservator can revoke or amend the durable power of attorney only if the court in which the conservatorship proceeding is pending has first made an order authorizing or requiring the fiduciary to modify or revoke the durable power of attorney and the modification or revocation is in accord with the order.

(c) This section does not apply to a durable power of attorney for health care.

(d) This section is not subject to limitation in the power of attorney.

4207. (a) An attorney-in-fact may resign by any of the following

means:

(1) If the principal is competent, by giving notice to the principal.

(2) If a conservator has been appointed, by giving notice to the conservator.

(3) On written agreement of a successor who is designated in the power of attorney or pursuant to the terms of the power of attorney to serve as attorney-in-fact.

(4) Pursuant to a court order.

(b) This section is not subject to limitation in the power of attorney.

Article 2. Duties of Attorneys-in-Fact

4230. (a) Except as provided in subdivisions (b) and (c), a person who is designated as an attorney-in-fact has no duty to exercise the authority granted in the power of attorney and is not subject to the other duties of an attorney-in-fact, regardless of whether the principal has become incapacitated, is missing, or is otherwise unable to act.

(b) Acting for the principal in one or more transactions does not obligate an attorney-in-fact to act for the principal in a subsequent transaction, but the attorney-in-fact has a duty to complete a transaction that the attorney-in-fact has commenced.

(c) If an attorney-in-fact has expressly agreed in writing to act for the principal, the attorney-in-fact has a duty to act pursuant to the terms of the agreement. The agreement to act on behalf of the principal is enforceable against the attorney-in-fact as a fiduciary regardless of whether there is any consideration to support a contractual obligation.

4231. (a) Except as provided in subdivisions (b) and (c), in dealing with property of the principal, an attorney-in-fact shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries.

(b) If an attorney-in-fact is not compensated, the attorney-in-fact is not liable for a loss to the principal's property unless the loss results from the attorney-in-fact's bad faith, intentional wrongdoing, or gross negligence.

(c) An attorney-in-fact who has special skills or expertise or was designated as an attorney-in-fact on the basis of representations of special skills or expertise shall observe the standard of care that would be observed by others with similar skills or expertise.

4232. (a) An attorney-in-fact has a duty to act solely in the interest of the principal and to avoid conflicts of interest.

(b) An attorney-in-fact is not in violation of the duty provided in subdivision (a) solely because the attorney-in-fact also benefits from acting for the principal, has conflicting interests in relation to the property, care, or affairs of the principal, or acts in an inconsistent manner regarding the respective interests of the principal and the

attorney-in-fact.

4233. (a) The attorney-in-fact shall keep the principal's property separate and distinct from other property in a manner adequate to identify the property clearly as belonging to the principal.

(b) An attorney-in-fact holding property for a principal complies with subdivision (a) if the property is held in the name of the principal or in the name of the attorney-in-fact as attorney-in-fact for the principal.

4234. (a) To the extent reasonably practicable under the circumstances, an attorney-in-fact has a duty to keep in regular contact with the principal, to communicate with the principal, and to follow the instructions of the principal.

(b) With court approval, the attorney-in-fact may disobey instructions of the principal.

4235. If the principal becomes wholly or partially incapacitated, or if there is a question concerning the capacity of the principal to give instructions to and supervise the attorney-in-fact, the attorney-in-fact may consult with a person previously designated by the principal for this purpose, and may also consult with and obtain information needed to carry out the attorney-in-fact's duties from the principal's spouse, physician, attorney, accountant, a member of the principal's family, or other person, business entity, or government agency with respect to matters to be undertaken on the principal's behalf and affecting the principal's personal affairs, welfare, family, property, and business interests. A person from whom information is requested shall disclose relevant information to the attorney-in-fact. Disclosure under this section is not a waiver of any privilege that may apply to the information disclosed.

4236. (a) The attorney-in-fact shall keep records of all transactions entered into by the attorney-in-fact on behalf of the principal.

(b) The attorney-in-fact does not have a duty to make an account of transactions entered into on behalf of the principal, except in the following circumstances:

(1) At any time requested by the principal.

(2) Where the power of attorney requires the attorney-in-fact to account and specifies to whom the account is to be made.

(3) On request by the conservator of the estate of the principal while the principal is living.

(4) On request by the principal's personal representative or successor in interest after the death of the principal.

(5) Pursuant to court order.

(c) The following persons are entitled to examine and copy the records kept by the attorney-in-fact:

(1) The principal.

(2) The conservator of the estate of the principal while the principal is living.

(3) The principal's personal representative or successor in interest after the death of the principal.

(4) Any other person, pursuant to court order.

(d) This section is not subject to limitation in the power of attorney.

4237. An attorney-in-fact with special skills has a duty to apply the full extent of those skills.

4238. (a) On termination of an attorney-in-fact's authority, the attorney-in-fact shall promptly deliver possession or control of the principal's property as follows:

(1) If the principal is not incapacitated, to the principal or as directed by the principal.

(2) If the principal is incapacitated, to the following persons with the following priority:

(A) To a qualified successor attorney-in-fact.

(B) As to any community property, to the principal's spouse.

(C) To the principal's conservator of the estate or guardian of the estate.

(3) In the case of the death of the principal, to the principal's personal representative, if any, or the principal's successors.

(b) On termination of an attorney-in-fact's authority, the attorney-in-fact shall deliver copies of any records relating to transactions undertaken on the principal's behalf that are requested by the person to whom possession or control of the property is delivered.

(c) Termination of an attorney-in-fact's authority does not relieve the attorney-in-fact of any duty to render an account of actions taken as attorney-in-fact.

(d) The attorney-in-fact has the powers reasonably necessary under the circumstances to perform the duties provided by this section.

Article 3. Authority of Attorneys-in-Fact

4260. This article does not apply to the following:

(a) Statutory form powers of attorney under Part 3 (commencing with Section 4400).

(b) Durable powers of attorney for health care under Part 4 (commencing with Section 4600).

4261. If a power of attorney grants general authority to an attorney-in-fact and is not limited to one or more express actions, subjects, or purposes for which general authority is conferred, the attorney-in-fact has all the authority to act that a person having the capacity to contract may carry out through an attorney-in-fact specifically authorized to take the action.

4262. Subject to this article, if a power of attorney grants limited authority to an attorney-in-fact, the attorney-in-fact has the following authority:

(a) The authority granted in the power of attorney, as limited with respect to permissible actions, subjects, or purposes.

(b) The authority incidental, necessary, or proper to carry out the

granted authority.

4263. (a) A power of attorney may grant authority to the attorney-in-fact by incorporating powers by reference to another statute, including, but not limited to, the following:

(1) Powers of attorneys-in-fact provided by the Uniform Statutory Form Power of Attorney Act (Part 3 (commencing with Section 4400)).

(2) Powers of guardians and conservators provided by Chapter 5 (commencing with Section 2350) and Chapter 6 (commencing with Section 2400) of Part 4 of Division 4.

(3) Powers of trustees provided by Chapter 2 (commencing with Section 16200) of Part 4 of Division 9.

(b) Incorporation by reference to another statute includes any amendments made to the incorporated provisions after the date of execution of the power of attorney.

4264. A power of attorney may not be construed to grant authority to an attorney-in-fact to perform any of the following acts unless expressly authorized in the power of attorney:

(a) Create, modify, or revoke a trust.

(b) Fund with the principal's property a trust not created by the principal or a person authorized to create a trust on behalf of the principal.

(c) Make or revoke a gift of the principal's property in trust or otherwise.

(d) Exercise the right to make a disclaimer on behalf of the principal. This subdivision does not limit the attorney-in-fact's authority to disclaim a detrimental transfer to the principal with the approval of the court.

(e) Create or change survivorship interests in the principal's property or in property in which the principal may have an interest.

(f) Designate or change the designation of beneficiaries to receive any property, benefit, or contract right on the principal's death.

(g) Make a loan to the attorney-in-fact.

4265. A power of attorney may not authorize an attorney-in-fact to perform any of the following acts:

(a) Make, publish, declare, amend, or revoke the principal's will.

(b) Consent to any action under a durable power of attorney for health care forbidden by Section 4722.

4266. The grant of authority to an attorney-in-fact, whether by the power of attorney, by statute, or by the court, does not in itself require or permit the exercise of the power. The exercise of authority by an attorney-in-fact is subject to the attorney-in-fact's fiduciary duties.

CHAPTER 5. RELATIONS WITH THIRD PERSONS

4300. A third person shall accord an attorney-in-fact acting pursuant to the provisions of a power of attorney the same rights and privileges that would be accorded the principal if the principal were

personally present and seeking to act. However, a third person is not required to honor the attorney-in-fact's authority or conduct business with the attorney-in-fact if the principal cannot require the third person to act or conduct business in the same circumstances.

4301. A third person may rely on, contract with, and deal with an attorney-in-fact with respect to the subjects and purposes encompassed or expressed in the power of attorney without regard to whether the power of attorney expressly authorizes the specific act, transaction, or decision by the attorney-in-fact.

4302. When requested to engage in transactions with an attorney-in-fact, a third person, before incurring any duty to comply with the power of attorney, may require the attorney-in-fact to provide identification, specimens of the signatures of the principal and the attorney-in-fact, and any other information reasonably necessary or appropriate to identify the principal and the attorney-in-fact and to facilitate the actions of the third person in transacting business with the attorney-in-fact. A third person may require an attorney-in-fact to provide the current and permanent residence addresses of the principal before agreeing to engage in a transaction with the attorney-in-fact.

4303. (a) A third person who acts in good faith reliance on a power of attorney is not liable to the principal or to any other person for so acting if all of the following requirements are satisfied:

(1) The power of attorney is presented to the third person by the attorney-in-fact designated in the power of attorney.

(2) The power of attorney appears on its face to be valid.

(3) The power of attorney includes a notary public's certificate of acknowledgment or is signed by two witnesses.

(b) Nothing in this section is intended to create an implication that a third person is liable for acting in reliance on a power of attorney under circumstances where the requirements of subdivision (a) are not satisfied. Nothing in this section affects any immunity that may otherwise exist apart from this section.

4304. (a) The death of a principal who has executed a power of attorney, whether durable or nondurable, does not revoke or terminate the agency as to the attorney-in-fact or a third person who, without actual knowledge of the principal's death, acts in good faith under the power of attorney. Any action so taken, unless otherwise invalid or unenforceable, binds the principal's successors in interest.

(b) The incapacity of a principal who has previously executed a nondurable power of attorney does not revoke or terminate the agency as to the attorney-in-fact or a third person who, without actual knowledge of the incapacity of the principal, acts in good faith under the power of attorney. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

4305. (a) As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney-in-fact under a power of attorney, whether durable or nondurable, stating that, at the time of the

exercise of the power, the attorney-in-fact did not have actual knowledge of the termination of the power of attorney or the attorney-in-fact's authority by revocation or of the principal's death or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable.

(b) This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

4306. (a) If an attorney-in-fact furnishes an affidavit pursuant to Section 4305, whether voluntarily or on demand, a third person dealing with the attorney-in-fact who refuses to accept the exercise of the attorney-in-fact's authority referred to in the affidavit is liable for attorney's fees incurred in an action or proceeding necessary to confirm the attorney-in-fact's qualifications or authority, unless the court determines that the third person believed in good faith that the attorney-in-fact was not qualified or was attempting to exceed or improperly exercise the attorney-in-fact's authority.

(b) The failure of a third person to demand an affidavit pursuant to Section 4305 does not affect the protection provided the third person by this chapter, and no inference as to whether a third person has acted in good faith may be drawn from the failure to demand an affidavit from the attorney-in-fact.

4307. (a) A copy of a power of attorney certified under this section has the same force and effect as the original power of attorney.

(b) A copy of a power of attorney may be certified by any of the following:

(1) An attorney authorized to practice law in this state.

(2) A notary public in this state.

(3) An official of a state or of a political subdivision who is authorized to make certifications.

(c) The certification shall state that the certifying person has examined the original power of attorney and the copy and that the copy is a true and correct copy of the original power of attorney.

(d) Nothing in this section is intended to create an implication that a third person may be liable for acting on good faith reliance on a copy of a power of attorney that has not been certified under this section.

4308. (a) A third person who conducts activities through employees is not charged under this chapter with actual knowledge of any fact relating to a power of attorney, nor of a change in the authority of an attorney-in-fact, unless both of the following requirements are satisfied:

(1) The information is received at a home office or a place where there is an employee with responsibility to act on the information.

(2) The employee has a reasonable time in which to act on the information using the procedure and facilities that are available to the third person in the regular course of its operations.

(b) Knowledge of an employee in one branch or office of an entity that conducts business through branches or multiple offices is not attributable to an employee in another branch or office.

4309. Nothing in this chapter requires a third person to engage in any transaction with an attorney-in-fact if the attorney-in-fact has previously breached any agreement with the third person.

4310. Without limiting the generality of Section 4300, nothing in this chapter requires a financial institution to open a deposit account for a principal at the request of an attorney-in-fact if the principal is not currently a depositor of the financial institution or to make a loan to the attorney-in-fact on the principal's behalf if the principal is not currently a borrower of the financial institution.

PART 3. UNIFORM STATUTORY FORM POWER OF ATTORNEY

CHAPTER 1. GENERAL PROVISIONS

4400. This part may be cited as the Uniform Statutory Form Power of Attorney Act.

4401. The following statutory form power of attorney is legally sufficient when the requirements of Section 4402 are satisfied:

UNIFORM STATUTORY FORM POWER OF ATTORNEY

(California Probate Code Section 4401)

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (CALIFORNIA PROBATE CODE SECTIONS 4400–4465). IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I _____
(your name and address)

appoint _____
(name and address of the person appointed, or of each person appointed if you want to designate more than one)

as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL

____ (A) Real property transactions.
____ (B) Tangible personal property transactions.
____ (C) Stock and bond transactions.
____ (D) Commodity and option transactions.
____ (E) Banking and other financial institution transactions.
____ (F) Business operating transactions.
____ (G) Insurance and annuity transactions.
____ (H) Estate, trust, and other beneficiary transactions.
____ (I) Claims and litigation.
____ (J) Personal and family maintenance.

___ (K) Benefits from social security, medicare, medicaid, or other governmental programs, or civil or military service.

___ (L) Retirement plan transactions.

___ (M) Tax matters.

___ (N) ALL OF THE POWERS LISTED ABOVE.

YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This power of attorney will continue to be effective even though I become incapacitated.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME INCAPACITATED.

EXERCISE OF POWER OF ATTORNEY WHERE MORE THAN ONE AGENT DESIGNATED

If I have designated more than one agent, the agents are to act

_____

IF YOU APPOINTED MORE THAN ONE AGENT AND YOU WANT EACH AGENT TO BE ABLE TO ACT ALONE WITHOUT THE OTHER AGENT JOINING, WRITE THE WORD "SEPARATELY" IN THE BLANK SPACE ABOVE. IF YOU DO NOT INSERT ANY WORD IN THE BLANK SPACE, OR IF YOU INSERT THE WORD "JOINTLY" THEN ALL OF YOUR AGENTS MUST ACT OR SIGN TOGETHER.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this ____ day of _____, 19____

_____
(your signature)

_____
(your social security number)

State of _____ County of _____

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

[Include certificate of acknowledgment of notary public in compliance with Section 1189 of the Civil Code or other applicable law.]

4402. A statutory form power of attorney under this part is legally sufficient if all of the following requirements are satisfied:

(a) The wording of the form complies substantially with Section 4401. A form does not fail to comply substantially with Section 4401 merely because the form does not include the provisions of Section 4401 relating to designation of co-agent. A form does not fail to comply substantially with Section 4401 merely because the form uses the sentence "Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation" in place of the sentence "Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation," in which case the form shall be interpreted as if it contained the sentence "Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation."

(b) The form is properly completed.

(c) The signature of the principal is acknowledged.

4403. If the line in front of (N) of the statutory form under Section 4401 is initialed, an initial on the line in front of any other power does not limit the powers granted by line (N).

4404. A statutory form power of attorney legally sufficient under this part is durable to the extent that the power of attorney contains language, such as "This power of attorney will continue to be effective even though I become incapacitated," showing the intent of the principal that the power granted may be exercised notwithstanding later incapacity.

4405. (a) A statutory form power of attorney under this part that limits the power to take effect upon the occurrence of a specified event or contingency, including, but not limited to, the incapacity of the principal, may contain a provision designating one or more persons who, by a written declaration under penalty of perjury, have the power to determine conclusively that the specified event or contingency has occurred.

(b) A statutory form power of attorney that contains the provision described in subdivision (a) becomes effective when the person or persons designated in the power of attorney execute a written declaration under penalty of perjury that the specified event or contingency has occurred, and any person may act in reliance on the written declaration without liability to the principal or to any other person, regardless whether the specified event or contingency has actually occurred.

(c) The provision described in subdivision (a) may be included in the "Special Instructions" portion of the form set forth in Section 4401.

(d) Subdivisions (a) and (b) do not provide the exclusive method by which a statutory form power of attorney under this part may be limited to take effect upon the occurrence of a specified event or contingency.

4406. (a) If a third person to whom a properly executed

statutory form power of attorney under this part is presented refuses to honor the agent's authority under the power of attorney within a reasonable time, the third person may be compelled to honor the agent's authority under the power of attorney in an action brought against the third person for this purpose, except that the third person may not be compelled to honor the agent's authority if the principal could not compel the third person to act in the same circumstances.

(b) If an action is brought under this section, the court shall award attorney's fees to the agent if the court finds that the third person acted unreasonably in refusing to accept the agent's authority under the statutory form power of attorney.

(c) For the purpose of subdivision (b), and without limiting any other grounds that may constitute a reasonable refusal to accept an agent's authority under a statutory form power of attorney, a third person shall not be deemed to have acted unreasonably in refusing to accept an agent's authority if the refusal is authorized or required by state or federal statute or regulation.

(d) Notwithstanding subdivision (c), a third person's refusal to accept an agent's authority under a statutory form power of attorney under this part shall be deemed unreasonable if the only reason for the refusal is that the power of attorney is not on a form prescribed by the third person to whom the power of attorney is presented.

(e) The remedy provided in this section is cumulative and nonexclusive.

4407. Unless there is a conflicting provision in this part, in which case the provision of this part governs, the other provisions of this division apply to a statutory form power of attorney.

4408. Nothing in this part affects or limits the use of any other form for a power of attorney. A form that complies with the requirements of any law other than the provisions of this part may be used instead of the form set forth in Section 4401, and none of the provisions of this part apply if the other form is used.

4409. (a) A statutory short form power of attorney executed before, on, or after the repeal of Chapter 3 (commencing with Section 2450) of Title 9 of Part 4 of the Civil Code by Chapter 986 of the Statutes of 1990, using a form that complied with former Section 2450 of the Civil Code, as originally enacted by Chapter 602 of the Statutes of 1984, or as amended by Chapter 403 of the Statutes of 1985, is as valid as if Chapter 3 (commencing with Section 2450) of Title 9 of Part 4 of the Civil Code had not been repealed by, and former Section 2511 of the Civil Code amended by, Chapter 986 of the Statutes of 1990.

(b) A statutory form power of attorney executed before, on, or after the repeal of Chapter 3.5 (commencing with Section 2475) of Title 9 of Part 4 of the Civil Code by the act that enacted this section, using a form that complied with the repealed chapter of the Civil Code is as valid as if that chapter had not been repealed.

CHAPTER 2. CONSTRUCTION OF POWERS

4450. By executing a statutory form power of attorney with respect to a subject listed in Section 4401, the principal, except as limited or extended by the principal in the power of attorney, empowers the agent, for that subject, to do all of the following:

(a) Demand, receive, and obtain by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received for the purposes intended.

(b) Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction, and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal.

(c) Execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the agent considers desirable to accomplish a purpose of a transaction.

(d) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, a claim existing in favor of or against the principal or intervene in litigation relating to the claim.

(e) Seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney.

(f) Engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant.

(g) Keep appropriate records of each transaction, including an accounting of receipts and disbursements.

(h) Prepare, execute, and file a record, report, or other document the agent considers desirable to safeguard or promote the principal's interest under a statute or governmental regulation.

(i) Reimburse the agent for expenditures properly made by the agent in exercising the powers granted by the power of attorney.

(j) In general, do any other lawful act with respect to the subject.

4451. In a statutory form power of attorney, the language granting power with respect to real property transactions empowers the agent to do all of the following:

(a) Accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire, an interest in real property or a right incident to real property.

(b) Sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition, consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease, sublease, or otherwise dispose of, an interest in real property or a right incident to real property.

(c) Release, assign, satisfy, and enforce by litigation or otherwise, a mortgage, deed of trust, encumbrance, lien, or other claim to real property which exists or is asserted.

(d) Do any act of management or of conservation with respect to

an interest in real property, or a right incident to real property, owned, or claimed to be owned, by the principal, including all of the following:

(1) Insuring against a casualty, liability, or loss.

(2) Obtaining or regaining possession, or protecting the interest or right, by litigation or otherwise.

(3) Paying, compromising, or contesting taxes or assessments, or applying for and receiving refunds in connection with them.

(4) Purchasing supplies, hiring assistance or labor, and making repairs or alterations in the real property.

(e) Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right.

(f) Participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property and receive and hold shares of stock or obligations received in a plan of reorganization, and act with respect to them, including all of the following:

(1) Selling or otherwise disposing of them.

(2) Exercising or selling an option, conversion, or similar right with respect to them.

(3) Voting them in person or by proxy.

(g) Change the form of title of an interest in or right incident to real property.

(h) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest or right.

4452. In a statutory form power of attorney, the language granting power with respect to tangible personal property transactions empowers the agent to do all of the following:

(a) Accept as a gift or as security for a loan, reject, demand, buy, receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property.

(b) Sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease, sublease to others, or otherwise dispose of tangible personal property or an interest in tangible personal property.

(c) Release, assign, satisfy, or enforce by litigation or otherwise, a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property.

(d) Do an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including all of the following:

(1) Insuring against casualty, liability, or loss.

(2) Obtaining or regaining possession, or protecting the property or interest, by litigation or otherwise.

(3) Paying, compromising, or contesting taxes or assessments or

applying for and receiving refunds in connection with taxes or assessments.

(4) Moving from place to place.

(5) Storing for hire or on a gratuitous bailment.

(6) Using, altering, and making repairs or alterations.

4453. In a statutory form power of attorney, the language granting power with respect to stock and bond transactions empowers the agent to do all of the following:

(a) Buy, sell, and exchange stocks, bonds, mutual funds, and all other types of securities and financial instruments except commodity futures contracts and call and put options on stocks and stock indexes.

(b) Receive certificates and other evidences of ownership with respect to securities.

(c) Exercise voting rights with respect to securities in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

4454. In a statutory form power of attorney, the language granting power with respect to commodity and option transactions empowers the agent to do all of the following:

(a) Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated option exchange.

(b) Establish, continue, modify, and terminate option accounts with a broker.

4455. In a statutory form power of attorney, the language granting power with respect to banking and other financial institution transactions empowers the agent to do all of the following:

(a) Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal.

(b) Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, industrial loan company, brokerage firm, or other financial institution selected by the agent.

(c) Hire or close a safe deposit box or space in a vault.

(d) Contract to procure other services available from a financial institution as the agent considers desirable.

(e) Withdraw by check, order, or otherwise money or property of the principal deposited with or left in the custody of a financial institution.

(f) Receive bank statements, vouchers, notices, and similar documents from a financial institution and act with respect to them.

(g) Enter a safe deposit box or vault and withdraw or add to the contents.

(h) Borrow money at an interest rate agreeable to the agent and pledge as security personal property of the principal necessary in order to borrow, pay, renew, or extend the time of payment of a debt of the principal.

(i) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or

nonnegotiable paper of the principal, or payable to the principal or the principal's order, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due.

(j) Receive for the principal and act upon a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument.

(k) Apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution, and give an indemnity or other agreement in connection with letters of credit.

(*l*) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

4456. In a statutory form power of attorney, the language granting power with respect to business operating transactions empowers the agent to do all of the following:

(a) Operate, buy, sell, enlarge, reduce, and terminate a business interest.

(b) To the extent that an agent is permitted by law to act for a principal and subject to the terms of the partnership agreement:

(1) Perform a duty or discharge a liability and exercise a right, power, privilege, or option that the principal has, may have, or claims to have, under a partnership agreement, whether or not the principal is a partner.

(2) Enforce the terms of a partnership agreement by litigation or otherwise.

(3) Defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of membership in the partnership.

(c) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of a bond, share, or other instrument of similar character, and defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of a bond, share, or similar instrument.

(d) With respect to a business owned solely by the principal:

(1) Continue, modify, renegotiate, extend, and terminate a contract made with an individual or a legal entity, firm, association, or corporation by or on behalf of the principal with respect to the business before execution of the power of attorney.

(2) Determine the policy of the business as to (A) the location of its operation, (B) the nature and extent of its business, (C) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation, (D) the amount and types of insurance carried, and (E) the mode of engaging, compensating, and dealing with its accountants, attorneys, and other agents and employees.

(3) Change the name or form of organization under which the business is operated and enter into a partnership agreement with other persons or organize a corporation to take over all or part of the

operation of the business.

(4) Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business, and control and disburse the money in the operation of the business.

(e) Put additional capital into a business in which the principal has an interest.

(f) Join in a plan of reorganization, consolidation, or merger of the business.

(g) Sell or liquidate a business or part of it at the time and upon the terms the agent considers desirable.

(h) Represent the principal in establishing the value of a business under a buy-out agreement to which the principal is a party.

(i) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business which are required by a governmental agency or instrumentality or which the agent considers desirable, and make related payments.

(j) Pay, compromise, or contest taxes or assessments and do any other act which the agent considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

4457. In a statutory form power of attorney, the language granting power with respect to insurance and annuity transactions empowers the agent to do all of the following:

(a) Continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract.

(b) Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment.

(c) Pay the premium or assessment on, modify, rescind, release, or terminate a contract of insurance or annuity procured by the agent.

(d) Designate the beneficiary of the contract, but the agent may be named a beneficiary of the contract, or an extension, renewal, or substitute for it, only to the extent the agent was named as a beneficiary under a contract procured by the principal before executing the power of attorney.

(e) Apply for and receive a loan on the security of the contract of insurance or annuity.

(f) Surrender and receive the cash surrender value.

(g) Exercise an election.

(h) Change the manner of paying premiums.

(i) Change or convert the type of insurance contract or annuity as to any insurance contract or annuity with respect to which the

principal has or claims to have a power described in this section.

(j) Change the beneficiary of a contract of insurance or annuity, but the agent may not be designated a beneficiary except to the extent permitted by subdivision (d).

(k) Apply for and procure government aid to guarantee or pay premiums of a contract of insurance on the life of the principal.

(*l*) Collect, sell, assign, hypothecate, borrow upon, or pledge the interest of the principal in a contract of insurance or annuity.

(m) Pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

4458. In a statutory form power of attorney, the language granting power with respect to estate, trust, and other beneficiary transactions, empowers the agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including the power to do all of the following:

(a) Accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund.

(b) Demand or obtain by litigation or otherwise money or other thing of value to which the principal is, may become, or claims to be entitled by reason of the fund.

(c) Initiate, participate in, and oppose litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal.

(d) Initiate, participate in, and oppose litigation to remove, substitute, or surcharge a fiduciary.

(e) Conserve, invest, disburse, and use anything received for an authorized purpose.

(f) Transfer an interest of the principal in real property, stocks, bonds, accounts with financial institutions, insurance, and other property, to the trustee of a revocable trust created by the principal as settlor.

4459. In a statutory form power of attorney, the language with respect to claims and litigation empowers the agent to do all of the following:

(a) Assert and prosecute before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, cross-complaint, or offset, and defend against an individual, a legal entity, or government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief.

(b) Bring an action to determine adverse claims, intervene in

litigation, and act as amicus curiae.

(c) In connection with litigation:

(1) Procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use any available procedure to effect, enforce, or satisfy a judgment, order, or decree.

(2) Perform any lawful act, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding the principal in litigation.

(d) Submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation.

(e) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation.

(f) Act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization proceeding, or with respect to an assignment for the benefit of creditors, receivership, or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value.

(g) Pay a judgment against the principal or a settlement made in connection with litigation and receive and conserve money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

4460. In a statutory form power of attorney, the language granting power with respect to personal and family maintenance empowers the agent to do all of the following:

(a) Do the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, children, and other individuals customarily or legally entitled to be supported by the principal, including providing living quarters by purchase, lease, or other contract, or paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals.

(b) Provide for the individuals described in subdivision (a) all of the following:

(1) Normal domestic help.

(2) Usual vacations and travel expenses.

(3) Funds for shelter, clothing, food, appropriate education, and other current living costs.

(c) Pay for the individuals described in subdivision (a) necessary medical, dental, and surgical care, hospitalization, and custodial care.

(d) Continue any provision made by the principal, for the individuals described in subdivision (a), for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them.

(e) Maintain or open charge accounts for the convenience of the individuals described in subdivision (a) and open new accounts the agent considers desirable to accomplish a lawful purpose.

(f) Continue payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization and continue contributions to those organizations.

4461. In a statutory form power of attorney, the language granting power with respect to benefits from social security, medicare, medicaid, or other governmental programs, or civil or military service, empowers the agent to do all of the following:

(a) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in subdivision (a) of Section 4460, and for shipment of their household effects.

(b) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose.

(c) Prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled, under a statute or governmental regulation.

(d) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive.

(e) Receive the financial proceeds of a claim of the type described in this section, conserve, invest, disburse, or use anything received for a lawful purpose.

4462. In a statutory form power of attorney, the language granting power with respect to retirement plan transactions empowers the agent to do all of the following:

(a) Select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals.

(b) Designate beneficiaries under those plans and change existing designations.

(c) Make voluntary contributions to those plans.

(d) Exercise the investment powers available under any self-directed retirement plan.

(e) Make rollovers of plan benefits into other retirement plans.

(f) If authorized by the plan, borrow from, sell assets to, and purchase assets from the plan.

(g) Waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.

4463. In a statutory form power of attorney, the language granting power with respect to tax matters empowers the agent to do all of the following:

(a) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act returns, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents (including consents and agreements under Internal Revenue Code Section 2032A or any successor section), closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and to the tax year in which the power of attorney was executed and any subsequent tax year.

(b) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority.

(c) Exercise any election available to the principal under federal, state, local, or foreign tax law.

(d) Act for the principal in all tax matters for all periods before the Internal Revenue Service and any other taxing authority.

4464. The powers described in this chapter are exercisable equally with respect to an interest the principal has when the statutory form power of attorney is executed or acquires later, whether or not the property is located in this state, and whether or not the powers are exercised or the power of attorney is executed in this state.

4465. A statutory form power of attorney under this part does not empower the agent to modify or revoke a trust created by the principal unless that power is expressly granted by the power of attorney. If a statutory form power of attorney under this part empowers the agent to modify or revoke a trust created by the principal, the trust may only be modified or revoked by the agent as provided in the trust instrument.

PART 4. DURABLE POWERS OF ATTORNEY FOR HEALTH CARE

CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

Article 1. Definitions

4600. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this part.

4603. "Community care facility" means a community care facility

as defined in Section 1502 of the Health and Safety Code.

4606. "Durable power of attorney for health care" means a durable power of attorney to the extent that it authorizes an attorney-in-fact to make health care decisions for the principal.

4609. "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition and includes decisions affecting the principal after death.

4612. "Health care decision" means consent, refusal of consent, or withdrawal of consent to health care, or a decision to begin, continue, increase, limit, discontinue, or not to begin any health care.

4615. "Health care provider" means a person who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or practice of a profession.

4618. "Residential care facility for the elderly" means a residential care facility for the elderly as defined in Section 1569.2 of the Health and Safety Code.

4621. "Statutory form durable power of attorney for health care" means a durable power of attorney for health care that satisfies the requirements of Chapter 3 (commencing with Section 4770).

Article 2. General Provisions

4650. (a) A durable power of attorney executed on or after January 1, 1984, is effective to authorize the attorney-in-fact to make health care decisions for the principal only if the durable power of attorney complies with this chapter.

(b) A durable power of attorney executed before January 1, 1984, that specifically authorizes the attorney-in-fact to make decisions relating to the medical or health care of the principal shall be deemed to be valid under this chapter after January 1, 1984, notwithstanding that it fails to comply with subdivision (a) or (c) of Section 4121 or subdivision (a) of Section 4704; but, to the extent that the durable power of attorney authorizes the attorney-in-fact to make health care decisions for the principal, the durable power of attorney is subject to all the provisions of this chapter and to Part 5 (commencing with Section 4900).

(c) Nothing in this chapter affects the validity of a decision made under a durable power of attorney before January 1, 1984.

4651. (a) Notwithstanding Section 4703, on and after January 1, 1986, a printed form of a durable power of attorney for health care may be sold or otherwise distributed if it complies with former Section 2433 of the Civil Code as amended by Section 5 of Chapter 312 of the Statutes of 1984, or with former Section 2433 of the Civil Code as in effect at the time of sale or distribution. However, any printed form of a durable power of attorney for health care printed on or after January 1, 1986, that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal

counsel shall comply with former Section 2433 of the Civil Code or Section 4703 of this code in effect at the time of printing.

(b) Notwithstanding Section 4700, a printed form of a durable power of attorney for health care may be sold or otherwise distributed if it complies with former Section 2432 of the Civil Code as enacted by Section 10 of Chapter 1204 of the Statutes of 1983 or as subsequently amended, or with Section 4700 of this code. However, any printed form of a durable power of attorney for health care printed on or after January 1, 1986, shall comply with the requirements of former Section 2432 of the Civil Code or Section 4700 of this code in effect at the time of printing.

(c) A durable power of attorney for health care executed on or after January 1, 1986, is not invalid if it complies with former Section 2432 of the Civil Code as originally enacted or as subsequently amended. A durable power of attorney for health care executed on or after January 1, 1986, using a printed form that complied with former Section 2433 of the Civil Code, as amended by Section 5 of Chapter 312 of the Statutes of 1984, is as valid as if it had been executed using a printed form that complied with former Section 2433 of the Civil Code as thereafter amended or with Section 4703 of this code.

4652. (a) Subject to Section 4720, nothing in this part affects any right a person may have to make health care decisions on behalf of another.

(b) This part does not affect the law governing health care treatment in an emergency.

4653. A durable power of attorney for health care or similar instrument executed in another state or jurisdiction in compliance with the laws of that state or jurisdiction or of this state, shall be valid and enforceable in this state to the same extent as a durable power of attorney for health care validly executed in this state.

4654. (a) This section applies only to a durable power of attorney for health care that satisfies one of the following requirements:

(1) The power of attorney was executed after January 1, 1984, but before January 1, 1992.

(2) The power of attorney was executed on or after January 1, 1992, and contains a warning statement that refers to a seven-year limit on its duration.

(b) Unless a shorter period is provided in the durable power of attorney for health care, a durable power of attorney for health care described in subdivision (a) expires seven years after the date of its execution unless at the end of the seven-year period the principal lacks the capacity to make health care decisions for himself or herself, in which case the durable power of attorney for health care continues in effect until the time when the principal regains the capacity to make health care decisions for himself or herself.

CHAPTER 2. DURABLE POWERS OF ATTORNEY FOR HEALTH CARE

Article 1. Creation and Effect of Durable Power of Attorney for Health Care

4700. An attorney-in-fact under a durable power of attorney may not make health care decisions unless the durable power of attorney satisfies all of the following requirements:

(a) The power of attorney specifically grants authority to the attorney-in-fact to make health care decisions.

(b) The power of attorney is executed as provided in Section 4121.

(c) The power of attorney satisfies the requirements of this article.

4701. If the durable power of attorney for health care is signed by witnesses, as provided in Section 4121, in addition to the requirements applicable to witnesses under Section 4122, the following requirements shall be satisfied:

(a) None of the following persons may act as a witness:

(1) The principal's health care provider or an employee of the principal's health care provider.

(2) The operator or an employee of a community care facility.

(3) The operator or an employee of a residential care facility for the elderly.

(b) Each witness shall make the following declaration in substance:

"I declare under penalty of perjury under the laws of California that the person who signed or acknowledged this document is personally known to me to be the principal, or that the identity of the principal was proved to me by convincing evidence, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney-in-fact by this document, and that I am not the principal's health care provider, an employee of the principal's health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly."

(c) At least one of the witnesses shall be a person who is not one of the following:

(1) A relative of the principal by blood, marriage, or adoption.

(2) A person who would be entitled to any portion of the principal's estate upon the principal's death under a will existing at the time of execution of the durable power of attorney for health care or by operation of law then existing.

(d) The witness satisfying the requirement of subdivision (c) shall

also sign the following declaration in substance:

"I further declare under penalty of perjury under the laws of California that I am not related to the principal by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the principal's estate upon the principal's death under a will now existing or by operation of law."

(e) If the principal is a patient in a skilled nursing facility, as defined in subdivision (c) of Section 1250 of the Health and Safety Code, at the time the durable power of attorney for health care is executed, the power of attorney is not effective unless one of the witnesses is a patient advocate or ombudsman as may be designated by the Department of Aging for this purpose pursuant to any other applicable provision of law. The patient advocate or ombudsman shall declare that he or she is serving as a witness as required by this subdivision. It is the intent of this subdivision to recognize that some patients in skilled nursing facilities are insulated from a voluntary decisionmaking role, by virtue of the custodial nature of their care, so as to require special assurance that they are capable of willfully and voluntarily executing a durable power of attorney for health care.

4702. (a) Except as provided in subdivision (b), the following persons may not exercise authority to make health care decisions under a durable power of attorney:

(1) The treating health care provider or an employee of the treating health care provider.

(2) An operator or employee of a community care facility.

(3) An operator or employee of a residential care facility for the elderly.

(b) An employee of the treating health care provider or an employee of an operator of a community care facility or an employee of a residential care facility for the elderly may be designated as the attorney-in-fact to make health care decisions under a durable power of attorney for health care if (1) the employee is a relative of the principal by blood, marriage, or adoption, and (2) the other requirements of this chapter are satisfied.

(c) Except as provided in subdivision (b), if a health care provider becomes the principal's treating health care provider, the health care provider or an employee of the health care provider may not exercise authority to make health care decisions under a durable power of attorney.

(d) A conservator may not be designated as the attorney-in-fact to make health care decisions under a durable power of attorney for health care executed by a person who is a conservatee under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), unless all of the following are satisfied:

(1) The power of attorney is otherwise valid.

(2) The conservatee is represented by legal counsel.

(3) The lawyer representing the conservatee signs a certificate stating in substance:

"I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning his or her rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney."

4703. (a) A printed form of a durable power of attorney for health care that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall provide no other authority than the authority to make health care decisions on behalf of the principal and shall contain, in not less than 10-point boldface type or a reasonable equivalent thereof, the following warning statement:

WARNING TO PERSON EXECUTING THIS DOCUMENT

This is an important legal document. Before executing this document, you should know these important facts:

This document gives the person you designate as your agent (the attorney-in-fact) the power to make health care decisions for you. Your agent must act consistently with your desires as stated in this document or otherwise made known.

Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.

Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection, and health care necessary to keep you alive may not be stopped or withheld if you object at the time.

This document gives your agent authority to consent, to refuse to consent, or to withdraw consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. This power is subject to any statement of your desires and any limitations that you include in this document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of your agent to make health care decisions for you if your agent (1) authorizes anything that is illegal, (2) acts contrary to your known desires, or (3) where your desires are not known, does anything that is clearly contrary to your best interests.

This power will exist for an indefinite period of time unless you

limit its duration in this document.

You have the right to revoke the authority of your agent by notifying your agent or your treating doctor, hospital, or other health care provider orally or in writing of the revocation.

Your agent has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document.

Unless you otherwise specify in this document, this document gives your agent the power after you die to (1) authorize an autopsy, (2) donate your body or parts thereof for transplant or therapeutic or educational or scientific purposes, and (3) direct the disposition of your remains.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

(b) The printed form described in subdivision (a) shall also include the following notice:

"This power of attorney will not be valid for making health care decisions unless it is either (1) signed by two qualified adult witnesses and who are present when you sign or acknowledge your signature or (2) acknowledged before a notary public in California."

(c) This section does not apply to the statutory form provided by Section 4771.

4704. (a) A durable power of attorney prepared for execution by a person resident in this state that permits the attorney-in-fact to make health care decisions and that is not a printed form shall include one of the following:

(1) The substance of the statements provided in subdivision (a) of Section 4703 in capital letters.

(2) A certificate signed by the principal's lawyer stating: "I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning his or her rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney."

(b) If a durable power of attorney includes the certificate provided for in paragraph (2) of subdivision (a) and permits the attorney-in-fact to make health care decisions for the principal, the applicable law of which the client is to be advised by the lawyer signing the certificate includes, but is not limited to, the matters listed in subdivision (a) of Section 4703.

Article 2. Authority of Attorney-in-Fact Under Durable Power of Attorney for Health Care

4720. (a) Unless the durable power of attorney provides otherwise, the attorney-in-fact designated in a durable power of attorney for health care who is known to the health care provider to be available and willing to make health care decisions has priority over any other person to act for the principal in all matters of health care decisions, but the attorney-in-fact does not have authority to make a particular health care decision if the principal is able to give informed consent with respect to that decision.

(b) Subject to any limitations in the durable power of attorney, the attorney-in-fact designated in a durable power of attorney for health care may make health care decisions for the principal, before or after the death of the principal, to the same extent as the principal could make health care decisions if the principal had the capacity to do so, including the following:

(1) Making a disposition under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

(2) Authorizing an autopsy under Section 7113 of the Health and Safety Code.

(3) Directing the disposition of remains under Section 7100 of the Health and Safety Code.

(c) In exercising the authority under the durable power of attorney for health care, the attorney-in-fact has a duty to act consistent with the desires of the principal as expressed in the durable power of attorney or otherwise made known to the attorney-in-fact at any time or, if the principal's desires are unknown, to act in the best interests of the principal.

(d) Nothing in this chapter affects any right the person designated as attorney-in-fact may have, apart from the durable power of attorney for health care, to make or participate in the making of health care decisions on behalf of the principal.

4721. Except to the extent the right is limited by the durable power of attorney for health care, an attorney-in-fact designated to make health care decisions under a durable power of attorney for health care has the same right as the principal to receive information regarding the proposed health care, to receive and review medical records, and to consent to the disclosure of medical records.

4722. A power of attorney may not authorize the attorney-in-fact to consent to any of the following on behalf of the principal:

(a) Commitment to or placement in a mental health treatment facility.

(b) Convulsive treatment (as defined in Section 5325 of the Welfare and Institutions Code).

(c) Psychosurgery (as defined in Section 5325 of the Welfare and Institutions Code).

(d) Sterilization.

(e) Abortion.

4723. Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing, or to permit any affirmative or deliberate act or omission to end life other than the withholding or withdrawal of health care pursuant to a durable power of attorney for health care so as to permit the natural process of dying. In making health care decisions under a durable power of attorney for health care, an attempted suicide by the principal shall not be construed to indicate a desire of the principal that health care treatment be restricted or inhibited.

4724. Nothing in this chapter authorizes an attorney-in-fact to consent to health care, or to consent to the withholding or withdrawal of health care necessary to keep the principal alive, if the principal objects to the health care or to the withholding or withdrawal of the health care. In such a case, the case is governed by the law that would apply if there were no durable power of attorney for health care.

4725. No health care provider, health care service plan, insurer issuing disability insurance, self-insured employee welfare plan, or nonprofit hospital plan or similar insurance plan, may condition admission to a facility, or the providing of treatment, or insurance, on the requirement that a patient execute a durable power of attorney for health care.

4726. Any person who, except where justified or excused by law, alters or forges a durable power of attorney for health care of another, or willfully conceals or withholds personal knowledge of a revocation as provided under Section 4727, with the intent to cause a withholding or withdrawal of health care necessary to keep the principal alive contrary to the desires of the principal, and thereby, because of that act, directly causes health care necessary to keep the principal alive to be withheld or withdrawn and the death of the principal thereby to be hastened, is subject to prosecution for unlawful homicide as provided in Chapter 1 (commencing with Section 187) of Title 4 of Part 1 of the Penal Code.

4727. (a) At any time while the principal has the capacity to give a durable power of attorney for health care, the principal may do any of the following:

(1) Revoke the appointment of the attorney-in-fact under the durable power of attorney for health care by notifying the attorney-in-fact orally or in writing.

(2) Revoke the authority granted to the attorney-in-fact to make health care decisions by notifying the health care provider orally or in writing.

(b) If the principal notifies the health care provider orally or in writing that the authority granted to the attorney-in-fact to make health care decisions is revoked, the health care provider shall make the notification a part of the principal's medical records and shall make a reasonable effort to notify the attorney-in-fact of the revocation.

(c) It is presumed that the principal has the capacity to revoke a durable power of attorney for health care. This presumption is a presumption affecting the burden of proof.

(d) Unless it provides otherwise, a valid durable power of attorney for health care revokes any prior durable power of attorney for health care.

(e) Unless the durable power of attorney for health care expressly provides otherwise, if after executing a durable power of attorney for health care the principal's marriage is dissolved or annulled, the dissolution or annulment revokes any designation of the former spouse as an attorney-in-fact to make health care decisions for the principal. If any designation is revoked solely by this subdivision, it is revived by the principal's remarriage to the former spouse.

(f) If authority granted by a durable power of attorney for health care is revoked under this section, a person is not subject to criminal prosecution or civil liability for acting in good faith reliance upon the durable power of attorney for health care unless the person has actual knowledge of the revocation.

Article 3. Protections and Immunities

4750. (a) Subject to any limitations stated in the durable power of attorney for health care and to subdivision (b) and to Sections 4722, 4723, 4724, 4725, and 4726, a health care provider is not subject to criminal prosecution, civil liability, or professional disciplinary action except to the same extent as would be the case if the principal, having had the capacity to give informed consent, had made the health care decision on his or her own behalf under like circumstances, if the health care provider relies on a health care decision and both of the following requirements are satisfied:

(1) The decision is made by an attorney-in-fact who the health care provider believes in good faith is authorized under this chapter to make the decision.

(2) The health care provider believes in good faith that the decision is not inconsistent with the desires of the principal as expressed in the durable power of attorney for health care or otherwise made known to the health care provider, and, if the decision is to withhold or withdraw health care necessary to keep the principal alive, the health care provider has made a good faith effort to determine the desires of the principal to the extent that the principal is able to convey those desires to the health care provider and the results of the effort are made a part of the principal's medical records.

(b) Nothing in this chapter authorizes a health care provider to do anything illegal.

(c) Notwithstanding the health care decision of the attorney-in-fact designated by a durable power of attorney for health care, the health care provider is not subject to criminal prosecution, civil liability, or professional disciplinary action for failing to

withdraw health care necessary to keep the principal alive.

4751. For the purposes of the declaration of witnesses required by Section 4701 or 4771, "convincing evidence" means the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person signing or acknowledging the durable power of attorney for health care as principal is not the individual he or she claims to be and any one of the following:

(a) Reasonable reliance on the presentation of any one of the following, if the document is current or has been issued within five years:

(1) An identification card or driver's license issued by the California Department of Motor Vehicles.

(2) A passport issued by the Department of State of the United States.

(b) Reasonable reliance on the presentation of any one of the following, if the document is current or has been issued within five years and contains a photograph and description of the person named on it, is signed by the person, bears a serial or other identifying number, and, in the event that the document is a passport, has been stamped by the United States Immigration and Naturalization Service:

(1) A passport issued by a foreign government.

(2) A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers' licenses.

(3) An identification card issued by a state other than California.

(4) An identification card issued by any branch of the armed forces of the United States.

(c) If the principal is a patient in a skilled nursing facility, a witness who is a patient advocate or ombudsman may, for the purposes of Section 4701 or 4771, rely upon the representations of the administrators or staff of the skilled nursing facility, or of family members, as convincing evidence of the identity of the principal if the patient advocate or ombudsman believes that the representations provide a reasonable basis for determining the identity of the principal.

4752. In the absence of knowledge to the contrary, a physician and surgeon or other health care provider may presume that a durable power of attorney for health care or similar instrument, whether executed in another state or jurisdiction or in this state, is valid.

CHAPTER 3. STATUTORY FORM DURABLE POWER OF ATTORNEY FOR HEALTH CARE

4770. This chapter shall be known and may be cited as the Keene Health Care Agent Act.

4771. The use of the following form in the creation of a durable

power of attorney for health care under Chapter 1 (commencing with Section 4600) is lawful, and when used, the power of attorney shall be construed in accordance with this chapter and is subject to Chapter 1 (commencing with Section 4600), provided, however, that the use of a form previously authorized by this statute (at the time it was so authorized) remains valid.

STATUTORY FORM

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

(California Probate Code Section 4771)

WARNING TO PERSON EXECUTING

THIS DOCUMENT

THIS IS AN IMPORTANT LEGAL DOCUMENT WHICH IS AUTHORIZED BY THE KEENE HEALTH CARE AGENT ACT. BEFORE EXECUTING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

THIS DOCUMENT GIVES THE PERSON YOU DESIGNATE AS YOUR AGENT (THE ATTORNEY-IN-FACT) THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU. YOUR AGENT MUST ACT CONSISTENTLY WITH YOUR DESIRES AS STATED IN THIS DOCUMENT OR OTHERWISE MADE KNOWN.

EXCEPT AS YOU OTHERWISE SPECIFY IN THIS DOCUMENT, THIS DOCUMENT GIVES YOUR AGENT THE POWER TO CONSENT TO YOUR DOCTOR NOT GIVING TREATMENT OR STOPPING TREATMENT NECESSARY TO KEEP YOU ALIVE.

NOTWITHSTANDING THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOURSELF SO LONG AS YOU CAN GIVE INFORMED CONSENT WITH RESPECT TO THE PARTICULAR DECISION. IN ADDITION, NO TREATMENT MAY BE GIVEN TO YOU OVER YOUR OBJECTION AT THE TIME, AND HEALTH CARE NECESSARY TO KEEP YOU ALIVE MAY NOT BE STOPPED OR WITHHELD IF YOU OBJECT AT THE TIME.

THIS DOCUMENT GIVES YOUR AGENT AUTHORITY TO CONSENT, TO REFUSE TO CONSENT, OR TO WITHDRAW CONSENT TO ANY CARE, TREATMENT, SERVICE, OR PROCEDURE TO MAINTAIN, DIAGNOSE, OR TREAT A PHYSICAL OR MENTAL CONDITION. THIS POWER IS SUBJECT TO ANY STATEMENT OF YOUR DESIRES AND ANY LIMITATIONS THAT YOU INCLUDE IN THIS DOCUMENT. YOU MAY STATE IN THIS DOCUMENT ANY TYPES OF TREATMENT THAT YOU DO NOT DESIRE. IN ADDITION, A COURT CAN TAKE AWAY THE POWER OF YOUR AGENT TO

MAKE HEALTH CARE DECISIONS FOR YOU IF YOUR AGENT (1) AUTHORIZES ANYTHING THAT IS ILLEGAL, (2) ACTS CONTRARY TO YOUR KNOWN DESIRES, OR (3) WHERE YOUR DESIRES ARE NOT KNOWN, DOES ANYTHING THAT IS CLEARLY CONTRARY TO YOUR BEST INTERESTS.

THE POWERS GIVEN BY THIS DOCUMENT WILL EXIST FOR AN INDEFINITE PERIOD OF TIME UNLESS YOU LIMIT THEIR DURATION IN THIS DOCUMENT.

YOU HAVE THE RIGHT TO REVOKE THE AUTHORITY OF YOUR AGENT BY NOTIFYING YOUR AGENT OR YOUR TREATING DOCTOR, HOSPITAL, OR OTHER HEALTH CARE PROVIDER ORALLY OR IN WRITING OF THE REVOCATION.

YOUR AGENT HAS THE RIGHT TO EXAMINE YOUR MEDICAL RECORDS AND TO CONSENT TO THEIR DISCLOSURE UNLESS YOU LIMIT THIS RIGHT IN THIS DOCUMENT.

UNLESS YOU OTHERWISE SPECIFY IN THIS DOCUMENT, THIS DOCUMENT GIVES YOUR AGENT THE POWER AFTER YOU DIE TO (1) AUTHORIZE AN AUTOPSY, (2) DONATE YOUR BODY OR PARTS THEREOF FOR TRANSPLANT OR THERAPEUTIC OR EDUCATIONAL OR SCIENTIFIC PURPOSES, AND (3) DIRECT THE DISPOSITION OF YOUR REMAINS.

THIS DOCUMENT REVOKES ANY PRIOR DURABLE POWER OF ATTORNEY FOR HEALTH CARE.

YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS FORM. THIS DOCUMENT WILL NOT BE VALID UNLESS YOU COMPLY WITH THE WITNESSING PROCEDURE.

IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

YOUR AGENT MAY NEED THIS DOCUMENT IMMEDIATELY IN CASE OF AN EMERGENCY THAT REQUIRES A DECISION CONCERNING YOUR HEALTH CARE. EITHER KEEP THIS DOCUMENT WHERE IT IS IMMEDIATELY AVAILABLE TO YOUR AGENT AND ALTERNATE AGENTS OR GIVE EACH OF THEM AN EXECUTED COPY OF THIS DOCUMENT. YOU MAY ALSO WANT TO GIVE YOUR DOCTOR AN EXECUTED COPY OF THIS DOCUMENT.

DO NOT USE THIS FORM IF YOU ARE A CONSERVATEE UNDER THE LANTERMAN-PETRIS-SHORT ACT AND YOU WANT TO APPOINT YOUR CONSERVATOR AS YOUR AGENT. YOU CAN DO THAT ONLY IF THE APPOINTMENT DOCUMENT INCLUDES A CERTIFICATE OF YOUR ATTORNEY.

1. DESIGNATION OF HEALTH CARE AGENT.

I, _____

(Insert your name and address)

do hereby designate and appoint _____

(Insert name, address, and telephone number of one individual only as your agent to make health care decisions for you. None of the following may be designated as your agent: (1) your treating health care provider, (2) a nonrelative employee of your treating health care provider, (3) an operator of a community care facility, (4) a nonrelative employee of an operator of a community care facility, (5) an operator of a residential care facility for the elderly, or (6) a nonrelative employee of an operator of a residential care facility for the elderly.)

as my agent to make health care decisions for me as authorized in this document. For the purposes of this document, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE.

By this document I intend to create a durable power of attorney for health care under Sections 4600 to 4752, inclusive, of the California Probate Code. This power of attorney is authorized by the Keene Health Care Agent Act and shall be construed in accordance with the provisions of Sections 4770 to 4779, inclusive, of the Probate Code. This power of attorney shall not be affected by my subsequent incapacity.

3. GENERAL STATEMENT OF AUTHORITY GRANTED.

Subject to any limitations in this document, I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make those decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my agent, including, but not limited to, my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment, services, and procedures.

(If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") below. You can indicate your desires by including a statement of your desires in the same paragraph.)

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS.

(Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning life-prolonging care, treatment, services, and procedures. You can also include a statement of your desires concerning other matters relating to your health

care. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this document, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.)

In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated below:

(a) Statement of desires concerning life-prolonging care, treatment, services, and procedures:

_____

_____

_____

_____

_____

_____

_____

_____

(b) Additional statement of desires, special provisions, and limitations: _____

_____

_____

_____

_____

_____

_____

_____

(You may attach additional pages if you need more space to complete your statement. If you attach additional pages, you must date and sign EACH of the additional pages at the same time you date and sign this document.)

5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH.

Subject to any limitations in this document, my agent has the power and authority to do all of the following:

(a) Request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records.

(b) Execute on my behalf any releases or other documents that may be required in order to obtain this information.

(c) Consent to the disclosure of this information.

(If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

6. SIGNING DOCUMENTS, WAIVERS, AND RELEASES.

Where necessary to implement the health care decisions that my agent is authorized by this document to make, my agent has the power and authority to execute on my behalf all of the following:

(a) Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice."

(b) Any necessary waiver or release from liability required by a hospital or physician.

7. AUTOPSY; ANATOMICAL GIFTS; DISPOSITION OF REMAINS.

Subject to any limitations in this document, my agent has the power and authority to do all of the following:

(a) Authorize an autopsy under Section 7113 of the Health and Safety Code.

(b) Make a disposition of a part or parts of my body under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

(c) Direct the disposition of my remains under Section 7100 of the Health and Safety Code.

(If you want to limit the authority of your agent to consent to an autopsy, make an anatomical gift, or direct the disposition of your remains, you must state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

8. DURATION.

(Unless you specify otherwise in the space below, this power of attorney will exist for an indefinite period of time.)

This durable power of attorney for health care expires on _____

(Fill in this space ONLY if you want to limit the duration of this power of attorney.)

9. DESIGNATION OF ALTERNATE AGENTS.

(You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1, above, in the event that agent is unable or ineligible to act as your agent. If the agent you designated is your spouse, he or she becomes ineligible to act as your agent if your marriage is dissolved.)

If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care decisions for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this document, these persons to serve in the order listed below:

A. First Alternate Agent _____

(Insert name, address, and telephone number of first alternate agent)

B. Second Alternate Agent _____

(Insert name, address, and telephone number of second alternate agent)

10. NOMINATION OF CONSERVATOR OF PERSON.

(A conservator of the person may be appointed for you if a court decides that one should be appointed. The conservator is responsible for your physical care, which under some circumstances includes making health care decisions for you. You are not required to nominate a conservator but you may do so. The court will appoint the person you nominate unless that would be contrary to your best interests. You may, but are not required to, nominate as your conservator the same person you named in paragraph 1 as your health care agent. You can nominate an individual as your conservator by completing the space below.)

If a conservator of the person is to be appointed for me, I nominate the following individual to serve as conservator of the person:

_____

(Insert name and address of person nominated as conservator of the person)

11. PRIOR DESIGNATIONS REVOKED. I revoke any prior durable power of attorney for health care.

DATE AND SIGNATURE OF PRINCIPAL

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY)

I sign my name to this Statutory Form Durable Power of Attorney for Health Care on _____ at
(Date)

_____, _____.
(City) (State)

_____
(You sign here)

(THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS SIGNED BY TWO QUALIFIED WITNESSES WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IF YOU HAVE ATTACHED ANY ADDITIONAL PAGES TO THIS FORM, YOU MUST DATE AND SIGN EACH OF THE ADDITIONAL PAGES AT THE SAME TIME YOU DATE AND SIGN THIS POWER OF ATTORNEY.)

STATEMENT OF WITNESSES

(This document must be witnessed by two qualified adult witnesses. None of the following may be used as a witness: (1) a person you designate as your agent or alternate agent, (2) a health care provider, (3) an employee of a health care provider, (4) the operator of a community care facility, (5) an employee of an operator of a community care facility, (6) the operator of a residential care facility for the elderly, or (7) an employee of an operator of a residential care facility for the elderly. At least one of the witnesses shall make the additional declaration set out following the place where the witnesses sign.)

(READ CAREFULLY BEFORE SIGNING. You can sign as a witness only if you personally know the principal or the identity of the principal is proved to you by convincing evidence.)

(To have convincing evidence of the identity of the principal, you must be

presented with and reasonably rely on any one or more of the following:

(1) An identification card or driver's license issued by the California Department of Motor Vehicles that is current or has been issued within five years.

(2) A passport issued by the Department of State of the United States that is current or has been issued within five years.

(3) Any of the following documents if the document is current or has been issued within five years and contains a photograph and description of the person named on it, is signed by the person, and bears a serial or other identifying number:

(a) A passport issued by a foreign government that has been stamped by the United States Immigration and Naturalization Service.

(b) A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers' licenses.

(c) An identification card issued by a state other than California.

(d) An identification card issued by any branch of the armed forces of the United States.

(4) If the principal is a patient in a skilled nursing facility, a witness who is a patient advocate or ombudsman may rely upon the representations of the administrator or staff of the skilled nursing facility, or of family members, as convincing evidence of the identity of the principal if the patient advocate or ombudsman believes that the representations provide a reasonable basis for determining the identity of the principal.)

(Other kinds of proof of identity are not allowed.)

I declare under penalty of perjury under the laws of California that the person who signed or acknowledged this document is personally known to me (or proved to me on the basis of convincing evidence) to be the principal, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider, an employee of a health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly.

Signature: _____ Residence Address: _____
Print Name: _____ _____
Date: _____ _____

Signature: _____ Residence Address: _____
Print Name: _____ _____
Date: _____ _____

(AT LEAST ONE OF THE ABOVE WITNESSES MUST ALSO SIGN THE FOLLOWING DECLARATION.)

I further declare under penalty of perjury under the laws of California that I am not related to the principal by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the principal's estate upon the principal's death under a

will now existing or by operation of law.

Signature: _____

Signature: _____

STATEMENT OF PATIENT ADVOCATE OR OMBUDSMAN

(If you are a patient in a skilled nursing facility, one of the witnesses must be a patient advocate or ombudsman. The following statement is required only if you are a patient in a skilled nursing facility—a health care facility that provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. The patient advocate or ombudsman must sign both parts of the "Statement of Witnesses" above AND must also sign the following statement.)

I further declare under penalty of perjury under the laws of California that I am a patient advocate or ombudsman as designated by the State Department of Aging and that I am serving as a witness as required by subdivision (e) of Section 4701 of the Probate Code.

Signature: _____

4772. (a) Notwithstanding Section 4703, except as provided in subdivision (b), a statutory form durable power of attorney for health care, to be valid, shall contain, in not less than 10-point boldface type or a reasonable equivalent thereof, the warning statement that is set forth in capital letters at the beginning of Section 4771.

(b) Subdivision (a) does not apply if the statutory form durable power of attorney for health care contains a certificate signed by the principal's lawyer stating the following: "I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time when this power of attorney was executed. I have advised my client concerning his or her rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney."

4773. (a) Notwithstanding subdivision (c) of Section 4121, a statutory form durable power of attorney for health care is valid, and the designated attorney-in-fact may make health care decisions pursuant to its authority, only if it (1) contains the date of its execution, (2) is signed by the principal, and (3) is signed by two qualified witnesses, each of whom executes, under penalty of perjury, the declaration set forth in the first paragraph of the "Statement of Witnesses" in the form set forth in Section 4771, and one of whom also executes the declaration under penalty of perjury set forth in the second paragraph of the "Statement of Witnesses" in

the form set forth in Section 4771.

(b) Nothing in this section excuses compliance with the special requirements imposed by subdivision (e) of Section 4701 and subdivision (d) of Section 4702.

4774. (a) Subject to subdivisions (b), (c), and (d), a power of attorney is a "statutory form durable power of attorney for health care," as this phrase is used in this chapter, if it meets both of the following requirements:

(1) It meets the requirements of Sections 4772 and 4773.

(2) It includes the exact wording of the text of paragraphs 1, 2, 3, and 4 of the form set forth in Section 4771.

(b) A statutory form durable power of attorney for health care may include one or more or all of paragraphs 5 to 11, inclusive, of the form set forth in Section 4771.

(c) A printed statutory form durable power of attorney for health care sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall contain the exact wording of the form set forth in Section 4771, including the warning and instructions, and nothing else. Nothing in this subdivision prohibits selling or otherwise distributing with the printed form (1) material that explains the form and its use if the material is separate from the printed form itself and is not a part of the form executed by the principal or (2) one or more additional pages that are separate from the printed form itself that a person may attach to the printed form as provided in subdivision (d) if the person so chooses.

(d) If one or more additional pages are attached to a statutory form durable power of attorney for health care as a statement, or additional statement, to be a part of subparagraph (a) or (b), or both, of paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") of the form set forth in Section 4771, each of the additional pages shall be dated and signed by the principal at the same time the principal dates and signs the statutory form durable power of attorney for health care.

4775. (a) A statutory form durable power of attorney for health care executed on or after January 1, 1992, using a form that complies with former Section 2500 of the Civil Code is as valid as if it had been executed using a form that complies with Section 4771 of this code.

(b) Notwithstanding former Section 2501 of the Civil Code or Section 4772 of this code, a statutory form durable power of attorney for health care executed on or after January 1, 1992, is not invalid if it contains the warning using the language set forth in former Section 2500 of the Civil Code instead of the warning using the language set forth in Section 4771 of this code.

(c) For the purposes of subdivision (c) of former Section 2503 of the Civil Code and subdivision (c) of Section 4774 of this code, on and after January 1, 1992, a printed statutory form durable power of attorney for health care may be sold or otherwise distributed if it contains the exact wording of the form set forth in former Section 2500 of the Civil Code or the exact wording of the form set forth in

Section 4771 of this code, including the warning and instructions, and nothing else; but any printed statutory form durable power of attorney for health care printed on or after January 1, 1992, that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall contain the exact wording of the form set forth in former Section 2500 of the Civil Code or the exact wording of the form set forth in Section 4771 of this code, including the warning and instructions, and nothing else.

4776. In a statutory form durable power of attorney for health care, the language conferring general authority with respect to "health care decisions" authorizes the attorney-in-fact to select and discharge physicians, dentists, nurses, therapists, and other health care professionals as the attorney-in-fact determines necessary to carry out the health care decisions the attorney-in-fact is authorized by the power of attorney to make.

4777. If a document described in paragraph 5 or 6 of the form set forth in Section 4771 is executed on behalf of the principal by the attorney-in-fact in the exercise of authority granted to the attorney-in-fact by paragraph 5 or 6 of the form set forth in Section 4771, the document has the same effect as if the principal had executed the document at the same time and under the same circumstances and had the capacity to execute the document at that time.

4778. If the authority of the attorney-in-fact under the statutory form durable power of attorney for health care is terminated by the court under Part 5 (commencing with Section 4900), an alternate attorney-in-fact designated in the statutory form durable power of attorney for health care is not authorized to act as the attorney-in-fact unless the court so orders. In the order terminating the authority of the attorney-in-fact to make health care decisions for the principal, the court shall authorize the alternate attorney-in-fact, if any, designated in the statutory form durable power of attorney for health care to act as the attorney-in-fact to make health care decisions for the principal under the durable power of attorney for health care unless the court finds that authorizing that alternate attorney-in-fact to make health care decisions for the principal would not be in the best interests of the principal.

4779. Nothing in this chapter affects or limits the use of any other form for a durable power of attorney for health care. Any form complying with the requirements of Chapter 1 (commencing with Section 4600) may be used in lieu of the form provided by Section 4771, and none of the provisions of this chapter apply if the other form is used.

PART 5. JUDICIAL PROCEEDINGS CONCERNING POWERS OF ATTORNEY

CHAPTER 1. GENERAL PROVISIONS

4900. A power of attorney is exercisable free of judicial intervention, subject to this part.

4901. The remedies provided in this part are cumulative and not exclusive of any other remedies provided by law.

4902. Except as provided in Section 4903, this part is not subject to limitation in the power of attorney.

4903. (a) Subject to subdivision (b), a power of attorney may expressly eliminate the authority of a person listed in Section 4940 to petition the court for any one or more of the purposes enumerated in Section 4941 or 4942 if both of the following requirements are satisfied:

(1) The power of attorney is executed by the principal at a time when the principal has the advice of a lawyer authorized to practice law in the state where the power of attorney is executed.

(2) The principal's lawyer signs a certificate stating in substance:

"I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning his or her rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney."

(b) A power of attorney may not limit the authority of the following persons to petition under this part:

(1) The attorney-in-fact, the principal, the conservator of the estate of the principal, or the public guardian, with respect to a petition for a purpose specified in Section 4941.

(2) The conservator of the person of the principal, with respect to a petition relating to a durable power of attorney for health care for a purpose specified in subdivision (a), (c), or (d) of Section 4942.

(3) The attorney-in-fact, with respect to a petition relating to a durable power of attorney for health care for a purpose specified in subdivision (a) or (b) of Section 4942.

4904. There is no right to a jury trial in proceedings under this division.

4905. Except as otherwise provided in this division, the general provisions in Division 3 (commencing with Section 1000) apply to proceedings under this division.

CHAPTER 2. JURISDICTION AND VENUE

4920. (a) The superior court has jurisdiction in proceedings under this division.

(b) The court in proceedings under this division is a court of general jurisdiction and the court, or a judge of the court, has the same power and authority with respect to the proceedings as otherwise provided by law for a superior court, or a judge of the

superior court, including, but not limited to, the matters authorized by Section 128 of the Code of Civil Procedure.

4921. The court may exercise jurisdiction in proceedings under this division on any basis permitted by Section 410.10 of the Code of Civil Procedure.

4922. Without limiting Section 4921, a person who acts as an attorney-in-fact under a power of attorney governed by this division is subject to personal jurisdiction in this state with respect to matters relating to acts and transactions of the attorney-in-fact performed in this state or affecting property or a principal in this state.

4923. The proper county for commencement of a proceeding under this division shall be determined in the following order of priority:

(a) The county in which the principal resides.

(b) The county in which the attorney-in-fact resides.

(c) A county in which property subject to the power of attorney is located.

(d) Any other county that is in the principal's best interest.

CHAPTER 3. PETITIONS, ORDERS, AND APPEALS

4940. Subject to Section 4903, a petition may be filed under this part by any of the following persons:

(a) The attorney-in-fact.

(b) The principal.

(c) The spouse of the principal.

(d) A relative of the principal.

(e) The conservator of the person or estate of the principal.

(f) The court investigator, described in Section 1454, of the county where the power of attorney was executed or where the principal resides.

(g) The public guardian of the county where the power of attorney was executed or where the principal resides.

(h) A treating health care provider, with respect to a durable power of attorney for health care.

(i) The personal representative or trustee of the principal's estate.

(j) The principal's successor in interest.

(k) A person who is requested in writing by an attorney-in-fact to take action.

(*l*) Any other interested person or friend of the principal.

4941. With respect to a power of attorney other than a durable power of attorney for health care, a petition may be filed under this part for any one or more of the following purposes:

(a) Determining whether the power of attorney is in effect or has terminated.

(b) Passing on the acts or proposed acts of the attorney-in-fact, including approval of authority to disobey the principal's instructions pursuant to subdivision (b) of Section 4234.

(c) Compelling the attorney-in-fact to submit the

attorney-in-fact's accounts or report the attorney-in-fact's acts as attorney-in-fact to the principal, the spouse of the principal, the conservator of the person or the estate of the principal, or to any other person required by the court in its discretion, if the attorney-in-fact has failed to submit an accounting or report within 60 days after written request from the person filing the petition.

(d) Declaring that the authority of the attorney-in-fact is revoked on a determination by the court of all of the following:

(1) The attorney-in-fact has violated or is unfit to perform the fiduciary duties under the power of attorney.

(2) At the time of the determination by the court, the principal lacks the capacity to give or to revoke a power of attorney.

(3) The revocation of the attorney-in-fact's authority is in the best interest of the principal or the principal's estate.

(e) Approving the resignation of the attorney-in-fact:

(1) If the attorney-in-fact is subject to a duty to act under Section 4230, the court may approve the resignation, subject to any orders the court determines are necessary to protect the principal's interests.

(2) If the attorney-in-fact is not subject to a duty to act under Section 4230, the court shall approve the resignation, subject to the court's discretion to require the attorney-in-fact to give notice to other interested persons.

(f) Compelling a third person to honor the authority of an attorney-in-fact.

4942. With respect to a durable power of attorney for health care, a petition may be filed under this part for any one or more of the following purposes:

(a) Determining whether the durable power of attorney for health care is in effect or has terminated.

(b) Determining whether the acts or proposed acts of the attorney-in-fact are consistent with the desires of the principal as expressed in the durable power of attorney for health care or otherwise made known to the court or, where the desires of the principal are unknown or unclear, whether the acts or proposed acts of the attorney-in-fact are in the best interests of the principal.

(c) Compelling the attorney-in-fact to report the attorney-in-fact's acts as attorney-in-fact to the principal, the spouse of the principal, the conservator of the person of the principal, or to any other person required by the court in its discretion, if the attorney-in-fact has failed to submit the report within 10 days after written request from the person filing the petition.

(d) Declaring that the durable power of attorney for health care is terminated upon a determination by the court that the attorney-in-fact has made a health care decision for the principal that authorized anything illegal or upon a determination by the court of both of the following:

(1) The attorney-in-fact has violated, has failed to perform, or is unfit to perform, the duty under the durable power of attorney for

health care to act consistent with the desires of the principal or, where the desires of the principal are unknown or unclear, is acting (by action or inaction) in a manner that is clearly contrary to the best interests of the principal.

(2) At the time of the determination by the court, the principal lacks the capacity to execute or to revoke a durable power of attorney for health care.

(e) Approving the resignation of the attorney-in-fact:

(1) If the attorney-in-fact is subject to a duty to act under Section 4230, the court may approve the resignation, subject to any orders the court determines are necessary to protect the principal's interests.

(2) If the attorney-in-fact is not subject to a duty to act under Section 4230, the court shall approve the resignation, subject to the court's discretion to require the attorney-in-fact to give notice to other interested persons.

4943. A proceeding under this part is commenced by filing a petition stating facts showing that the petition is authorized under this part, the grounds of the petition, and, if known to the petitioner, the terms of the power of attorney.

4944. The court may dismiss a petition if it appears that the proceeding is not reasonably necessary for the protection of the interests of the principal or the principal's estate and shall stay or dismiss the proceeding in whole or in part when required by Section 410.30 of the Code of Civil Procedure.

4945. (a) Subject to subdivision (b), at least 15 days before the time set for hearing, the petitioner shall serve notice of the time and place of the hearing, together with a copy of the petition, on the following:

(1) The attorney-in-fact if not the petitioner.

(2) The principal if not the petitioner.

(b) In the case of a petition to compel a third person to honor the authority of an attorney-in-fact, notice of the time and place of the hearing, together with a copy of the petition, shall be served on the third person in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure.

4946. With respect to a durable power of attorney for health care, the court in its discretion, upon a showing of good cause, may issue a temporary order prescribing the health care of the principal until the disposition of the petition filed under Section 4942. If a durable power of attorney for health care is in effect and a conservator (including a temporary conservator) of the person is appointed for the principal, the court that appoints the conservator in its discretion, upon a showing of good cause, may issue a temporary order prescribing the health care of the principal, that order to continue in effect for such time as is ordered by the court but in no case longer than the time necessary to permit the filing and determination of a petition filed under Section 4942.

4947. In a proceeding under this part commenced by the filing of a petition by a person other than the attorney-in-fact, the court may in its discretion award reasonable attorney's fees to one of the following:

(a) The attorney-in-fact, if the court determines that the proceeding was commenced without any reasonable cause.

(b) The person commencing the proceeding, if the court determines that the attorney-in-fact has clearly violated the fiduciary duties under the power of attorney or has failed without any reasonable cause or justification to submit accounts or report acts to the principal or conservator of the estate or of the person, as the case may be, after written request from the principal or conservator.

4948. An appeal may be taken from any of the following:

(a) Any final order made pursuant to Section 4941, except an order pursuant to subdivision (c) of Section 4941.

(b) Any final order made pursuant to Section 4942, except an order pursuant to subdivision (c) of Section 4942.

(c) An order dismissing the petition or denying a motion to dismiss under Section 4944.

SEC. 17. Section 5204 of the Probate Code is amended to read:

5204. (a) In addition to a power of attorney otherwise authorized by law, a special power of attorney is authorized under this section to apply to one or more accounts at a financial institution. For the purposes of this section, "account" includes checking accounts, savings accounts, certificates of deposit, savings certificates, and any other depository relationship with the financial institution.

(b) The special power of attorney under this section shall:

(1) Be in writing.

(2) Be signed by the person or persons giving the power of attorney.

(3) Explicitly identify the attorney-in-fact or attorneys-in-fact, the financial institution, and the account or accounts subject to the power.

(c) Language in substantially the following form is sufficient to create a power of attorney under this section: "Transactions regarding this account or certificate of deposit may be made by the named agent(s). This agency is governed by Section 5204 of the California Probate Code. Under Section 5204, (1) the agent has no present or future ownership or right of survivorship in this account, (2) the agent must keep a record of the transactions and disbursements made under the agency, and (3) the agent may make disbursements from this account only to or for the benefit of the account owner unless the account owner has authorized the disbursement in writing."

(d) The power of attorney granted under this section shall endure as between the grantor and grantee of the power until the earliest of the following occurs:

(1) Revocation by the grantor of the power.

(2) Termination of the account.

(3) Death of the grantor of the power.

(4) Appointment of a guardian or conservator of the estate of the grantor of the power.

(e) A financial institution may rely in good faith upon the validity of the power of attorney granted under this section and is not liable to the principal or any other person for doing so if (1) the power of attorney is on file with the financial institution and the transaction is made by the attorney-in-fact named in the power of attorney, (2) the power of attorney appears on its face to be valid, and (3) the financial institution has convincing evidence of the identity of the person signing the power of attorney as principal.

(f) For the purposes of subdivision (e), "convincing evidence" requires both of the following:

(1) Reasonable reliance on a document that satisfies the requirement of Section 4751.

(2) The absence of any information, evidence, or other circumstances that would lead a reasonable person to believe that the person signing the power of attorney as principal is not the individual he or she claims to be.

(g) The protection provided by subdivision (e) does not extend to payments made after written notice is received by the financial institution as to any of the events of termination of the power under subdivision (d) if the financial institution has had a reasonable time to act on the notice. No other notice or any other information shown to have been available to the financial institution shall affect its right to the protection provided by this subdivision.

(h) The attorney-in-fact acting under the power of attorney granted under this section shall maintain books or records to permit an accounting of the acts of the attorney-in-fact if an accounting is requested by a legal representative of the grantor of the power.

(i) The attorney-in-fact acting under a power of attorney granted under this section is liable for any disbursement other than a disbursement to or for the benefit of the grantor of the power, unless the grantor has authorized the disbursement in writing.

(j) Nothing in this section limits the use or effect of any other form of power of attorney for transactions with a financial institution. Nothing in this section creates an implication that a financial institution is liable for acting in reliance upon a power of attorney under circumstances where the requirements of subdivision (e) are not satisfied. Nothing in this section affects any immunity that may otherwise exist apart from this section.

(k) Nothing in this section prevents the attorney-in-fact from also being designated as a P.O.D. payee.

CHAPTER 308

An act to amend Sections 22825, 24353, 68085, 68101, 68502.5, and 77003 of, to add Sections 22754.35, 77006.5, and 77205.1 to, to repeal and add Sections 68073, 77203.5, 77205, and 77208 of, and to repeal Sections 22754.1, 22816.32, 22816.35, 22816.4, 68206, 77200, 77202, 77204, 77205.3, 77205.5, 77206, 77300, and 77301 of, the Government Code, and to amend Sections 11205 and 42201 of the Vehicle Code, relating to trial court funding, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. (a) The Legislature finds and declares that, since 1991, it has been the policy of the state to examine the operation and financing of superior, municipal, and justice courts in light of the need to reexamine and reconstruct the roles of each branch of government.

(b) It is also the policy of the state that the funding of trial court operations is most logically a candidate for state funding and that the state will progressively increase its share of funding of the annual costs for court operations to 65 percent for the 1994–95 fiscal year and to 70 percent for the 1995–96 fiscal year and will achieve savings in court operations costs through the enactment of administrative efficiencies.

(c) The Legislature further finds that it is the policy of the state to create a judicial branch budgeting system that protects the independence of the judiciary and optimizes local trial court control and responsibility, while preserving financial accountability to the overall State Budget.

(d) The Legislature further finds that, pursuant to these policies, courts are making a transition from budgeting through the counties to becoming a direct part of the state's annual budget.

(e) The Legislature declares its intent to do each of the following:

(1) Beginning in the 1994–95 fiscal year, to include the funding for the various functions of trial court operations specifically as allocations in the Budget Act as part of the judicial branch budget.

(2) To require progressively more careful identification of the costs of services obtained by the courts from county agencies, and to require the negotiation of agreements on the cost of county provided services.

(3) Through enactment of this act, to enable the transition to full state funding of the trial courts.

SEC. 2. Section 22754.1 of the Government Code is repealed.

SEC. 3. Section 22754.35 is added to the Government Code, to read:

22754.35. (a) As used in this part, "employee" includes any judge of a municipal or justice court.

(b) As used in this part, "annuitant" includes any judge of a municipal or justice court retired under the Judges' Retirement System.

(c) For purposes of this part, a municipal or justice court judge's entitlement shall be the same as a superior court judge in terms of health benefits and employer contributions, and the continuation of health benefits coverage shall be administered by the board.

(d) The state shall provide each sitting municipal court and justice court judge with health, dental, and vision care benefits equal to and in the same manner as the health, dental, and vision care benefits provided to superior court judges. These benefits shall be paid from funds provided pursuant to Section 77006.5.

(e) No judge shall have any salary or benefits reduced solely by reason of the enactment of this section.

(f) If a judge opts to receive health, dental, or vision care benefits from the state, the county shall reduce the judge's compensation by an amount equal to the amount the state pays for his or her health, dental, or vision care benefits.

SEC. 4. Section 22816.32 of the Government Code is repealed.

SEC. 5. Section 22816.35 of the Government Code is repealed.

SEC. 6. Section 22816.4 of the Government Code is repealed.

SEC. 7. Section 22825 of the Government Code is amended to read:

22825. (a) The employer and each employee or annuitant shall contribute a portion of the cost of providing for each employee and annuitant the benefit coverage afforded under any health benefit plan which the board has approved or for which it has executed a contract pursuant to this part, and in which the employee or annuitant may be enrolled.

The employer's contribution for each employee or annuitant shall be the amount necessary to pay the cost of his or her enrollment, including the enrollment of his family members, in a health benefits plan or plans, or, if less, sixteen dollars ($16) per month. There shall be only one such contribution with respect to all annuitants receiving allowances as survivors of the same employee or annuitant.

The contribution of each employee and annuitant shall be the total cost per month of the benefit coverage afforded him or her under the plan or plans less the portion thereof to be contributed by the employer.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 8. Section 24353 of the Government Code is amended to

read:

24353. Each officer of a county or judicial district authorized to collect money shall pay into the county treasury all money collected by him or her, or under his or her control, that is payable into the treasury in the form and at the time the county auditor requires. No officer who collects money as described in this section shall be required to accept payment in coin. If the county auditor finds that an officer of the county has failed to comply with the requirements for payment of moneys pursuant to this section or Section 68101, which directly results in the assessment of a financial penalty pursuant to Section 68085, the county department which failed to comply shall reimburse the judicial district in an amount equal to the actual penalty.

SEC. 9. Section 68073 of the Government Code is repealed.

SEC. 10. Section 68073 is added to the Government Code, to read:

68073. (a) Commencing July 1, 1994, a board of supervisors, subject to the funding limitation set forth in subdivision (b), shall provide suitable rooms for holding the superior, municipal, and justice courts, for the chambers of the judges of these courts and for court attendants, together with sufficient attendants, heat, light, furniture, furnishings, equipment, stationery, supplies, and other personal property, for the rooms and chambers and for the transaction of the business of the courts.

(b) Commencing July 1, 1994, and each year thereafter, with regard to court operations as defined in Section 77003, no board of supervisors shall be required to provide funding for those functions of the trial courts which are provided for in the state budget; however, in each county the board of supervisors shall provide funding for those functions for which funds are not provided for in the state budget, in an amount which complies with subdivision (a), recognizing the needs of the court, the county's fiscal condition, and the budget adopted by the Judicial Council, pursuant to paragraph (4) of subdivision (a) of Section 68502.5 and approved by the Legislature pursuant to paragraph (7) of subdivision (a) of Section 68502.5.

(c) If the board of supervisors of any county fails to provide funding as described in subdivision (b), the court shall give notice to the board of a specific deficiency. If the board then fails to provide funding necessary to comply with subdivision (b), the court may direct the appropriate officers of the county to provide the funding. The expenses incurred, certified by the judge or judges to be correct, are a charge against the county treasury and shall be paid out of the general fund.

(d) Prior to the taking action pursuant to subdivision (c), a court shall present to the Trial Court Budget Commission a written finding attesting to the necessity of the action. The finding shall include a summary of relevant facts, an assessment of the operational consequences of not receiving the funds at issue, and an outline of the steps taken to the exercise of this section. Upon review, the

commission, upon authorization of the Judicial Council, may or may not reallocate trial court funds from other trial courts, if it deems appropriate, in order to address the needs of the court. If moneys are not reallocated by the commission, the court may then direct the appropriate officers of the county to provide for the necessary resources to perform the court's functions, if the court deems it appropriate to do so.

(e) Prior to the construction of new court facilities or the alteration, remodeling, or relocation of existing court facilities, the board of supervisors shall submit proposed plans to the judge or judges of the court affected for review and recommendations as to the adequacy and standard of design, and that review and recommendation shall not be disregarded without reasonable grounds.

(f) This section shall not be construed as authorizing the county to supply to the official reporters of the courts stenograph, stenotype, or other shorthand machines; nor as authorizing the county to supply to the official reporters of the courts, for use in the preparation of transcripts, typewriters, transcribing equipment, supplies, or other personal property.

SEC. 11. Section 68085 of the Government Code is amended to read:

68085. (a) (1) There is hereby established the Trial Court Trust Fund, the proceeds of which shall be apportioned quarterly by the Controller on or before the 25th day of the month following the end of that quarter, upon appropriation by the Legislature, for the purpose of funding trial court operations, as defined in Section 77003.

(2) The quarterly apportionment payments shall be made by the Controller, except that the quarterly apportionment shall be withheld from any county that is delinquent in making the full transfer of funds pursuant to this section.

(b) Notwithstanding any other provision of law, the fees listed in subdivision (c) shall all be deposited upon collection in a special account in the county treasury, and transmitted therefrom monthly to the Controller for deposit in the Trial Court Trust Fund.

(c) Except as specified in subdivision (d), this section applies to all fees collected pursuant to Sections 26820.4, 26826, 26827, 68086, 72055, and 72056.

(d) This section does not apply to that portion of a filing fee collected pursuant to Section 26820.4, 26826, 26827, 72055, or 72056 which is allocated for dispute resolution pursuant to Section 470.3 of the Business and Professions Code, the county law library pursuant to Section 6320 of the Business and Professions Code, the Judges' Retirement Fund pursuant to Section 26822.3, automated recordkeeping or conversion to micrographics pursuant to Sections 26863 and 68090.7, and courthouse financing pursuant to Section 76238.

(e) Notwithstanding any other provision of law, no agency shall take action to change the amounts allocated to any of the above

funds.

(f) Before making any apportionments under this section, the Controller shall deduct, from the annual appropriation for that purpose, the actual administrative costs that will be incurred under this section. Costs reimbursed under this section shall be determined on an annual basis in consultation with the Judicial Council.

(g) Any amounts required to be transmitted by a county to the state pursuant to this section shall be remitted to the Controller no later than 45 days after the end of the month in which the fees were collected. This remittance shall be accompanied by a remittance advice identifying the collection month and the appropriate account in the Trial Court Trust Fund to which it is to be deposited. Any remittance which is not made by the county in accordance with this section shall be considered delinquent, and subject to the penalties pursuant to this section.

(h) Upon receipt of any delinquent payment, the Controller shall make the quarterly apportionment on or before the 25th day of the month following the month in which the delinquent payment was received from the county. The Controller shall calculate a penalty on any delinquent payment and that amount shall be deducted from the next quarterly apportionment. The penalty shall be calculated by multiplying the amount of the delinquent payment by the Pooled Money Investment Account rate at the end of the prior fiscal year.

(i) Penalty amounts withheld under subdivision (h) shall be reserved in the Trial Court Trust Fund. The Judicial Council shall allocate these moneys based upon the recommendations of the Trial Court Budget Commission.

(j) The Trial Court Trust Fund shall be invested in the Surplus Money Investment Fund and all interest earned shall be allocated to the Trial Court Trust Fund semiannually and shall be allocated among the counties in accordance with the requirements of subdivision (a). The specific allocations shall be specified by the Judicial Council, based upon recommendations from the Trial Court Budget Commission.

(k) Funds accrued in the Trial Court Trust Fund during the 1993–94 fiscal year shall be allocated pursuant to subdivision (j) to each option county in the month of November of 1993, and in the months of February, May, and August of 1994.

SEC. 12. Section 68101 of the Government Code is amended to read:

68101. Whenever pursuant to law the state is entitled to receive any portion of any money, forfeited bail or fines received by a judge of any court, that portion shall as soon as practicable after the receipt thereof, be deposited with the county treasurer of the county in which that court is situated, and paid, by warrant of the county auditor drawn upon a requisition of the clerk or judge of the court, at least once a month to the Treasurer to be deposited in the State Treasury. Any remittance not made pursuant to this section or Section 24353 shall be considered delinquent and subject to Section

68085.

Any judge imposing or collecting those fines or forfeitures shall keep a record of them and at least monthly transmit a record thereof to the county auditor. The county auditor shall transmit a record of the imposition, collection and payment of such fines or forfeitures to the Controller at the time of transmittal of each warrant to the Treasurer pursuant to this section.

SEC. 13. Section 68206 of the Government Code is repealed.

SEC. 14. Section 68502.5 of the Government Code is amended to read:

68502.5. (a) The Judicial Council shall provide by rule for the appointment of a standing Trial Court Budget Commission and the deadlines for meeting its various responsibilities. The commission shall have the authority to:

(1) Receive budget requests from the trial courts. Trial courts shall send to the county board of supervisors a copy of their proposed budgets and any revisions or appeals at the time their budget requests are submitted to the Trial Court Budget Commission, pursuant to this section. The counties may submit timely comments to the commission regarding the contents of the proposed budgets of their respective trial courts.

(2) Review the trial courts' budget requests and evaluate them against performance criteria established by the Judicial Council by which a court's performance, level of coordination, and efficiency can be measured.

(3) Annually recommend to the Judicial Council for its approval the projected cost in the subsequent fiscal year of court operations as defined in Section 77003 for each trial court. This estimation shall serve as the basis for court budgets, which shall be developed programmatically by court function, as approved by the Judicial Council, for comparison purposes and to delineate the funding responsibilities.

(4) Annually prepare a recommended schedule for the allocation of moneys to individual courts and a recommended overall trial court budget for approval by the Judicial Council and forwarding to the Governor for inclusion in the Governor's proposed State Budget. The recommended schedule shall be based on the performance criteria established pursuant to paragraph (2) and on a minimum standard established by the Judicial Council for the operation and staffing of all trial court operations. This minimum standard shall be modeled on court operations using all reasonable and available measures to increase court efficiency and coordination. The schedule of allocations shall assure that all trial courts receive funding for the minimum operating and staffing standards before funding operating and staffing requests above the minimum standards, and shall include incentives and rewards for any trial court's implementation of efficiencies and cost saving measures.

(5) Reallocate funds in accordance with Judicial Council rules during the course of the fiscal year to ensure equal access to the trial

courts by the public, to improve trial court operations, and to meet trial court emergencies. Reallocations shall be limited to 15 percent of that portion of any court's annual budget amount funded by the state, excluding any amount derived from trial court funding moneys appropriated to a county by the Legislature. Counties shall have no obligation to replace moneys reallocated pursuant to this paragraph.

(6) Allocate funds in the Trial Court Improvement Fund in accordance to Judicial Council rules to ensure equal access to trial courts by the public, to improve trial court operations, and to meet trial court emergencies.

(7) Upon approval of the trial courts' budget by the Legislature, prepare during the course of the fiscal year an allocation schedule for quarterly payments to the counties, consistent with Sections 68085 and 77205.1, which shall be submitted to the Controller's office by the 10th day of the month in which payments are to be made.

(8) Establish rules, pursuant to the authority of the Judicial Council, regarding a court's authority to transfer trial court funding moneys from one functional category to another in order to address needs in any functional category.

(9) At the request of the presiding judge of a trial court, conduct an independent review of the funding level of the court to determine whether it is adequate to enable the court to discharge its statutory and constitutional responsibilities.

(10) From time to time, review the level of fees charged by the courts for various services and prepare recommended adjustments for approval and forwarding to the Legislature by the Judicial Council.

(b) Members of the commission shall receive no compensation from the state for their services. When called into session, they shall receive their actual and necessary expenses for travel, board, and lodging, which shall be paid from the funds appropriated for this use. These expenses shall be appropriated in the manner as the Judicial Council directs, and shall be audited by the Controller in accordance with the rules of the State Board of Control.

SEC. 15. Section 77003 of the Government Code is amended to read:

77003. (a) As used in this chapter, "court operations" means all of the following:

(1) Salaries, benefits, and public agency retirement contributions for superior, municipal, and justice court judges and for subordinate judicial officers.

(2) The salary, benefits, and public agency retirement contributions for other court staff including all municipal court staff positions specifically prescribed by statute.

(3) Those marshals, constables, and sheriffs as the court deems necessary for court operations.

(4) Court-appointed counsel in juvenile court dependency proceedings and counsel appointed by the court to represent a minor pursuant to Chapter 10 (commencing with Section 3150) of Part 2 of

Division 8 of the Family Code.

(5) Services and supplies relating to court operations.

(6) Collective bargaining under the Meyers-Milias-Brown Act with respect to court employees specified in Section 3501.5.

(7) Actual indirect costs, not to exceed 18 percent of state trial court funding payments to counties for county general services attributable to court operations, but specifically excluding, but not limited to, law library operations conducted by a trust pursuant to statute; courthouse construction; district attorney services; probation services; indigent criminal defense; grand jury expenses and operations; and pretrial release services.

(8) The salaries, benefits, and public agency retirement contributions to be used in computing "court operations" are those salaries, benefits, and public agency retirement contributions in existence on June 30, 1991, and any reclassification made thereafter primarily for purposes of granting a salary increase shall not be applicable for purposes of this section.

SEC. 16. Section 77006.5 is added to the Government Code, to read:

77006.5. As used in this chapter, "trial court funding" means the amount of state funds provided for the operation of the trial courts, as defined in Section 77003, appropriated in the Budget Act, and allocated or reallocated by the Trial Court Budget Commission, upon authorization of the Judicial Council, created pursuant to Section 68502.5.

SEC. 17. Section 77200 of the Government Code is repealed.

SEC. 18. Section 77202 of the Government Code is repealed.

SEC. 19. Section 77203.5 of the Government Code is repealed.

SEC. 20. Section 77203.5 is added to the Government Code, to read:

77203.5. (a) For the purpose of funding trial court operations, each board of supervisors shall establish in the county treasury a Trial Court Operations Fund, which will operate as a special revenue fund. All funds appropriated in the Budget Act and allocated and reallocated by the Trial Court Budget Commission created pursuant to Section 68502.5 shall be deposited into the fund.

(b) The moneys of the Trial Court Operations Fund shall be payable only for purposes set forth pursuant to Sections 77003 and 77006.5. The presiding judge or his or her designee, in consultation with the county executive/administrator, shall authorize the expenditures from this fund, consistent with the trial court's budget, as recommended by the Trial Court Budget Commission and approved by the Judicial Council. All state allocations deposited into this fund shall be exclusively dedicated to offset the costs identified in the approved trial court budget. The purpose of this requirement is to produce a reduction in the net county costs of trial courts.

(c) Interest received by a county from the investment of money in its Trial Court Operations Fund shall be deposited in the fund and shall be used for trial court operations purposes.

(d) Pursuant to Section 77205, the Controller, at the request of the Legislature or Judicial Council, may perform financial and fiscal audits of this fund.

SEC. 21. Section 77204 of the Government Code is repealed.

SEC. 22. Section 77205 of the Government Code is repealed.

SEC. 23. Section 77205 is added to the Government Code, to read:

77205. (a) The Judicial Council shall adopt appropriate rules for budget submission, budget management, and reporting of revenues and expenditures by each court. The Controller, in consultation with the Judicial Council, shall maintain appropriate regulations for recordkeeping and accounting by the county and the courts, in order to determine all moneys collected by the county and the courts, including filing fees, fines, forfeitures, and penalties, and all revenues and expenditures relating to court operations.

(b) Regulations, rules, and reporting requirements adopted pursuant to this chapter shall be exempt from review and approval or other processing by the Office of Administrative Law as provided for in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(c) The Controller, at the request of the Legislature or the Judicial Council, may perform and publish financial and fiscal compliance audits of the reports submitted by the counties under this chapter. The Controller shall report the results of these audits to the Legislature.

SEC. 24. Section 77205.1 is added to the Government Code, to read:

77205.1. Upon appropriation by the Legislature, the Controller shall make quarterly payments of trial court funding on or before the 25th day of that quarter.

SEC. 25. Section 77205.3 of the Government Code is repealed.

SEC. 26. Section 77205.5 of the Government Code is repealed.

SEC. 27. Section 77206 of the Government Code is repealed.

SEC. 28. Section 77208 of the Government Code is repealed.

SEC. 29. Section 77208 is added to the Government Code, to read:

77208. (a) The state shall provide municipal court and justice court judges retired under the Judges' Retirement System with retiree health, dental, and vision care plans equal to and in the same manner as the health, dental, and vision benefits provided to retired superior court judges.

(b) No judge shall have any salary or benefits reduced solely by reason of the enactment of this section.

SEC. 30. Section 77300 of the Government Code is repealed.

SEC. 31. Section 77301 of the Government Code is repealed.

SEC. 32. Section 11205 of the Vehicle Code is amended to read:

11205. (a) The department shall publish a traffic violator school referral list of all the approved locations of traffic violator school classes, by school name, to be transmitted to each municipal and justice court in the state in sufficient quantity to allow the courts to provide a copy to each person referred to traffic violator school. The

list shall be revised at least twice annually and transmitted to the courts by the first day of January and the first day of July. It shall include all of the following:

(1) The name of each traffic violator school or, pursuant to subdivision (d), the general term "traffic violator school" followed by its traffic violator school license number.

(2) A phone number used for student information.

(3) The county and the judicial district.

(4) The cities where classes are available.

(b) Each traffic violator school owner shall be permitted one school name in a judicial district.

(c) The list shall be organized alphabetically in sections for each county and subsections for each judicial district within the county. The order of the names within each judicial district shall be random pursuant to a drawing or lottery conducted by the department.

(d) On the list prepared by the department under subdivision (c), each traffic violator school shall appear by name unless a court determines, pursuant to subdivision (e), that a name is inappropriate and directs the department to delete the name and instead list the school by the term "traffic violator school" followed by its license number. The deletion of the name of a school from the list for a judicial district shall not affect whether that school appears by name on the list for any other judicial district within the state. In making a determination under this subdivision regarding the deletion of a name from the list, the court shall use as its criteria whether the name is misleading to the public, undignified, or implies that the school offers inducements or premiums which derogate or distort the instructional intent of the traffic safety program.

(e) When the department transmits any referral list to each municipal and justice court pursuant to subdivision (a), each municipal and justice court shall do all of the following:

(1) Within 30 days of receipt of the list, notify the school owner of any school name that the court intends to remove from the referral list.

(2) Within 60 days of receipt of the list, make every effort to schedule, conduct, and complete a hearing for the school owner, or a representative, if requested, at which the sole issue shall be whether the name violates the standards set forth in subdivision (d). A substitute name may be submitted to the court at the conclusion of the hearing, pursuant to subdivision (h).

(3) Within 10 days of the completion of that hearing, notify the department and school owner of any school names it intends to remove from the referral list.

(f) In order for a court action to delete a school name from the next referral list published by the department, the department shall receive court notification no later than 90 days prior to publication of the next referral list and, absent a direct order by a superior court or court of higher jurisdiction, the department shall not fail to publish a referral list on the grounds that there exists pending litigation or

appeals concerning the lists.

(g) Any court notifying the department of a school name it intends to remove from the list, pursuant to this section, shall provide the school owner with the name of the judge making those findings.

(h) When a court informs a school owner, pursuant to subdivision (e), of its decision to delete the name of a traffic violator school from that judicial district's subsection of the department's traffic violator school referral list, the owner may, on a form approved by the department, submit a substitute name to the court and request approval of that name. The court shall, within 30 days of receipt of the request for approval of the substitute name, inform the department and the school owner, on a form approved by the department, of its approval or rejection of the substitute name. The school owner may continue this appeal process for approval of a substitute name until the court determines that the name does not violate the standard set forth in subdivision (d). A name approval in a judicial district shall not affect the school's name or listing in any other district in the state. The department shall not impose any fee or license requirement under this subdivision.

(i) If a court fails to act within 30 days on a request of a traffic violator school owner, pursuant to subdivision (h), the proposed substitute name shall be deemed approved by the court for the purposes of the traffic violator school referral list.

(j) (1) Every application filed with the department on and after June 1, 1991, for an original license by a traffic school owner or for approval to conduct classes in a judicial district not previously approved, shall be accompanied by the approval of the court in each judicial district proposed for those operations of the name of the school, on a form approved by the department for that purpose. For the approved name to be included in the traffic violator school referral list, the form shall be received by the department no later than 90 days prior to publication.

(2) When a court disapproves a school name pursuant to this subdivision, the court shall notify the school owner within 30 days of its disapproval and schedule a hearing for that school owner, or a representative, if requested, at which the sole issue shall be whether the name violates the standards set forth in subdivision (d). A substitute name may be submitted to the court at the conclusion of the hearing, pursuant to subdivision (h).

(3) The court shall make every effort to schedule, conduct, and complete a hearing within 60 days of receipt of the school owner's request for a school name approval. A name approval in a judicial district shall not affect the school's name or listing in any other district in the state. A change in physical location by a school within a judicial district shall not require approval pursuant to this subdivision.

(k) The department shall publish a list of the owners of traffic violator schools. One copy shall be provided to each municipal and justice court in the state. This list shall be revised at least twice

annually and transmitted to the courts by the first day of January and the first day of July. This list shall include all of the following:

(1) The name of each school, grouped by owner.

(2) The business office address.

(3) The business office telephone number.

(4) The license number.

(5) The owner's name.

(6) The operator's name.

(*l*) Except as otherwise provided in subdivision (d) of Section 42005, the court shall use either the current list of traffic violator schools published by the department when it orders a person to complete a traffic violator school pursuant to subdivision (a) or (b) of Section 42005 or, when a court utilizing a nonprofit agency for traffic violator school administration and monitoring services in which all traffic violator schools licensed by the department are allowed the opportunity to participate, a statewide referral list may be published by the nonprofit agency and distributed by the court. The agency shall monitor each classroom location represented on its referral list at least once every 90 days with reports forwarded to the department and the respective courts on a monthly basis.

(m) The court may charge a traffic violator a fee to defray the costs incurred by the agency for the monitoring reports and services provided to the court. The court may delegate collection of the fee to the agency. Fees shall be approved and regulated by the court. Until December 31, 1994, the fee shall not exceed the actual cost incurred by the agency or six dollars ($6), whichever is less. From January 1, 1995, until June 30, 1995, the fee shall not exceed the actual cost incurred by the agency or five dollars ($5), which ever is less. This subdivision shall remain operative until June 30, 1995, and on that date shall become inoperative unless a later enacted statute, which is enacted on or before June 30, 1995, deletes or extends that date.

(o) If any provision of subdivision (d) or (e), as added by Section 4 of Assembly Bill 185 of the 1991–92 Regular Session, or the application thereof to any person, is held to be unconstitutional, this section is repealed on the date the decision of the court so holding becomes final.

SEC. 33. Section 11205 of the Vehicle Code is amended to read:

11205. (a) The department shall publish semiannually, or more often as necessary to serve the purposes of this act, a list of all traffic violator schools which are licensed pursuant to this section. The list shall identify classroom facilities within a judicial district that are at a different location from a licensed school's principal facility. The department shall transmit the list to each municipal and justice court with a sufficient number of copies to allow the courts to provide one copy to each person referred to a licensed traffic violator school. The department shall, at least semiannually, revise the list to ensure that each court has a current list of all licensed traffic violator schools.

(b) Each licensed traffic violator school owner shall be permitted

one school name per judicial district.

(c) The referral list shall be organized alphabetically, in sections for each county, and contain subsections for each judicial district within the county. The order of the names within each judicial district shall be random pursuant to a drawing or lottery conducted by the department.

(d) Except as otherwise provided in subdivision (d) of Section 42005, the court shall use either the current referral list of traffic violator schools published by the department when it orders a person to complete a traffic violator school pursuant to subdivision (a) or (b) of Section 42005 or, when a court utilizing a nonprofit agency for traffic violator school administration and monitoring services in which all traffic violator schools licensed by the department are allowed the opportunity to participate, a statewide referral list may be published by the nonprofit agency and distributed by the court. The agency shall monitor each classroom location represented on its referral list at least once every 90 days with reports forwarded to the department and the respective courts on a monthly basis.

(e) The court may charge a traffic violator a fee to defray the costs incurred by the agency for the monitoring reports and services provided to the court. The court may delegate collection of the fee to the agency. Fees shall be approved and regulated by the court. Until December 31, 1994, the fee shall not exceed the actual cost incurred by the agency or six dollars ($6), whichever is less. From January 1, 1995, until June 30, 1995, the fee shall not exceed the actual cost incurred by the agency or five dollars ($5), whichever is less. This subdivision shall remain operative until June 30, 1995, and on that date shall become inoperative unless a later enacted statute, which is enacted on or before June 30, 1995, deletes or extends that date.

(f) If any provision of subdivision (d) or (e) of Section 11205, as added by Section 4 of Assembly Bill 185 of the 1991–92 Regular Session, or the application thereof to any person, is held to be unconstitutional, that Section 11205 is repealed on the date the decision of the court so holding becomes final, and on that date, this section shall become operative.

SEC. 34. Section 42201 of the Vehicle Code is amended to read:

42201. (a) Of the total amount of fines and forfeitures received by a county under Section 1463.001 of the Penal Code, fines and forfeitures collected from any person charged with a misdemeanor under this code following arrest by any officer employed by the state or by the county shall be paid into the general fund of the county. However, the board of supervisors of the county may, by resolution, provide that a portion thereof be transferred into the road fund of the county.

(b) The board of supervisors of a county may enter into a contract with the Department of the California Highway Patrol for the purpose of providing adequate protection for school pupils who are required to cross heavily traveled streets, highways, and roadways in

the unincorporated areas of the county. When requested, the Department of the California Highway Patrol may provide such service and the county shall reimburse the state for salaries and wages of crossing guards furnished by the Department of the California Highway Patrol pursuant to such contract, including any necessary retirement and general administrative costs and expenses in connection therewith, and may pay the costs thereof from amounts deposited in the road fund pursuant to this section.

(c) Fines and forfeitures received by a county under Section 1463.001 of the Penal Code may be used to pay the compensation of school crossing guards and necessary equipment costs and administrative costs.

(d) When requested by any county which had in effect on June 30, 1979, a contract with the Department of the California Highway Patrol, to provide protection for school pupils at school crossings, the department upon request of a county shall continue to administer such school crossing program until June 30, 1980. The county shall reimburse the Department of the California Highway Patrol for general administrative costs and expenses in connection therewith, except that, effective January 1, 1980, the crossing guards shall be furnished to the California Highway Patrol and such crossing guards shall be employees of the county, the county superintendent of schools, the affected school districts, or both the superintendent and the affected school districts, at the option of the board of supervisors of the county. Any salaries and wages of crossing guards, including necessary retirement and equipment costs and any administrative costs shall be paid or reimbursed by the county from amounts deposited in the road fund pursuant to this section.

(e) The board of supervisors may adopt standards for the provision of school crossing guards. The board has final authority over the total cost of the school crossing guard program of any agency to be paid or reimbursed from amounts deposited in the road fund pursuant to this section. The board of supervisors may specify that a designated county officer, employee, or commissioner is to hire school crossing guards, or, in the alternative, the board may specify that any school district crossing guard program in unincorporated areas shall be maintained by the school districts desiring the program.

SEC. 35. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 36. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into

immediate effect. The facts constituting the necessity are:

In order to provide adequate trial court funding for the 1994–95 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 309

An act to amend Section 24308 of the Government Code, relating to county government.

[Approved by Governor July 20, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. The Legislature hereby finds and declares that many statutory and regulatory provisions imposed upon county government prevent counties from organizing the administrative structure most fitting for the individual county. Counties vary greatly in size, need for particular services, and financial capability.

Therefore, the Legislature further finds and declares that each county should be granted the widest possible latitude in organizing its administrative structure, restricted only by provisions of the state constitution and statutes regarding elected officials.

SEC. 2. Section 24308 of the Government Code is amended to read:

24308. (a) Notwithstanding Sections 24300 and 24304, the board of supervisors of any county may organize, pursuant to ordinance or charter, the delivery of any services for which county government is responsible under state law, into departments or agencies that provide multiple services, except those duties and responsibilities of other elected county officials mandated by the California Constitution or by statute. Any county board of supervisors that elects to organize the delivery of services may consolidate, integrate, or separate duties and functions of county offices and organizational units within departments, to the extent deemed necessary by the board of supervisors.

(b) All personnel, including the heads of units within departments organized pursuant to this section and formed from units formerly within other county departments, shall possess the particular qualifications required by the statutes governing provision of the services provided by those departments. These qualifications include standards of education and experience to assure competence appropriate for the direction of the departments or the local administration of county functions.

(c) This section shall not permit the occupant of a consolidated, integrated, or separated office to practice any profession or trade for the practice of which a license, permit, or registration is required, without that license, permit, or registration.

(d) This section shall not be construed to affect any other statutory or regulatory provision governing county services or programs, however reorganized or renamed, except for the organizational requirements specified in this section. In no case may a state department or agency reject a county plan required by the Health and Safety Code or the Welfare and Institutions Code or regulations enacted pursuant to either of those codes or impose sanctions for any program or service due to the organization or reorganization of county departments as authorized under this section or Division 5 (commencing with Section 33200). Prior to taking action to reject a county plan or impose sanctions, the department or agency shall inform the county board of supervisors in writing of the deficiency.

CHAPTER 310

An act to add Section 6404.5 to the Labor Code, relating to occupational safety and health.

[Approved by Governor July 21, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 6404.5 is added to the Labor Code, to read:

6404.5. (a) The Legislature finds and declares that regulation of smoking in the workplace is a matter of statewide interest and concern. It is the intent of the Legislature in enacting this section to prohibit the smoking of tobacco products in all (100 percent of) enclosed places of employment in this state, as covered by this section, thereby eliminating the need of local governments to enact workplace smoking restrictions within their respective jurisdictions. It is further the intent of the Legislature to create a uniform statewide standard to restrict and prohibit the smoking of tobacco products in enclosed places of employment, as specified in this section, in order to reduce employee exposure to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from enactment or enforcement of disparate local workplace smoking restrictions. Notwithstanding any other provision of this section, it is the intent of the Legislature that any area not defined as a "place of employment" pursuant to subdivision (d) or in which the smoking of tobacco products is not regulated pursuant to subdivision (e) shall be subject to local regulation of smoking of tobacco products.

(b) No employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco products in an enclosed space at a place of employment.

(c) For purposes of this section, an employer who permits any nonemployee access to his or her place of employment on a regular basis has not acted knowingly or intentionally if he or she has taken the following reasonable steps to prevent smoking by a nonemployee:

(1) Posted clear and prominent signs, as follows:

(A) Where smoking is prohibited throughout the building or structure, a sign stating "No smoking" shall be posted at each entrance to the building or structure.

(B) Where smoking is permitted in designated areas of the building or structure, a sign stating "Smoking is prohibited except in designated areas" shall be posted at each entrance to the building or structure.

(2) Has requested, when appropriate, that a nonemployee who is smoking refrain from smoking in the enclosed workplace.

For purposes of this subdivision, "reasonable steps" does not include (A) the physical ejectment of a nonemployee from the place of employment or (B) any requirement for making a request to a nonemployee to refrain from smoking, under circumstances involving a risk of physical harm to the employer or any employee.

(d) For purposes of this section, "place of employment" does not include any of the following:

(1) Sixty-five percent of the guest room accommodations in a hotel, motel, or similar transient lodging establishment.

(2) Areas of the lobby in a hotel, motel, or other similar transient lodging establishment designated for smoking by the establishment. Such an establishment may permit smoking in a designated lobby area that does not exceed 25 percent of the total floor area of the lobby or, if the total area of the lobby is 2,000 square feet or less, that does not exceed 50 percent of the total floor area of the lobby. For purposes of this paragraph, "lobby" means the common public area of such an establishment in which registration and other similar or related transactions, or both, are conducted and in which the establishment's guests and members of the public typically congregate.

(3) Meeting and banquet rooms in a hotel, motel, other transient lodging establishment similar to a hotel or motel, restaurant, or public convention center, except while food or beverage functions are taking place, including setup, service, and cleanup activities, or when the room is being used for exhibit purposes. At times when smoking is not permitted in such a meeting or banquet room pursuant to this paragraph, the establishment may permit smoking in corridors and prefunction areas adjacent to and serving the meeting or banquet room if no employee is stationed in that corridor or area on other than a passing basis.

(4) Retail or wholesale tobacco shops and private smokers' lounges. For purposes of this paragraph:

(A) "Private smokers' lounge" means any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the

use of tobacco products, including, but not limited to, cigars and pipes.

(B) "Retail or wholesale tobacco shop" means any business establishment the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories.

(5) Cabs of motortrucks, as defined in Section 410 of the Vehicle Code, or truck tractors, as defined in Section 655 of the Vehicle Code, if no nonsmoking employees are present.

(6) Warehouse facilities. For purposes of this paragraph, "warehouse facility" means a warehouse facility with more than 100,000 square feet of total floor space, and 20 or fewer full-time employees working at the facility, but does not include any area within such a facility that is utilized as office space.

(7) Gaming clubs, in which smoking is permitted by subdivision (f). For purposes of this paragraph, "gaming club" means any gaming club as defined in Section 19802 of the Business and Professions Code or bingo facility as defined in Section 326.5 of the Penal Code that restricts access to minors under 18 years of age.

(8) Bars and taverns, in which smoking is permitted by subdivision (f). For purposes of this paragraph, "bar" or "tavern" means a facility primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises, in which the serving of food is incidental. "Bar or tavern" includes those facilities located within a hotel, motel, or other similar transient occupancy establishment. However, when located within a building in conjunction with another use, including a restaurant, "bar" or "tavern" includes only those areas used primarily for the sale and service of alcoholic beverages. "Bar" or "tavern" does not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein.

(9) Theatrical production sites, if smoking is an integral part of the story in the theatrical production.

(10) Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.

(11) Private residences, except for private residences licensed as family day care homes, during the hours of operation as family day care homes and in those areas where children are present.

(12) Patient smoking areas in long-term health care facilities, as defined in Section 1418 of the Health and Safety Code.

(13) Breakrooms designated by employers for smoking, provided that all of the following conditions are met:

(A) Air from the smoking room shall be exhausted directly to the outside by an exhaust fan. Air from the smoking room shall not be recirculated to other parts of the building.

(B) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the

federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.

(C) The smoking room shall be located in a nonwork area where no one, as part of his or her work responsibilities, is required to enter. For purposes of this paragraph, "work responsibilities" does not include any custodial or maintenance work carried out in the breakroom when it is unoccupied.

(D) There are sufficient nonsmoking breakrooms to accommodate nonsmokers.

(14) Employers with a total of five or fewer employees, either full-time or part-time, may permit smoking where all of the following conditions are met:

(A) The smoking area is not accessible to minors.

(B) All employees who enter the smoking area consent to permit smoking. No one, as part of his or her work responsibilities, shall be required to work in an area where smoking is permitted. An employer who is determined by the division to have used coercion to obtain consent or who has required an employee to work in the smoking area shall be subject to the penalty provisions of Section 6427.

(C) Air from the smoking area shall be exhausted directly to the outside by an exhaust fan. Air from the smoking area shall not be recirculated to other parts of the building.

(D) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.

This paragraph shall not be construed to (i) supersede or render inapplicable any condition or limitation on smoking areas made applicable to specific types of business establishments by any other paragraph of this subdivision or (ii) apply in lieu of any otherwise applicable paragraph of this subdivision that has become inoperative.

(e) Paragraphs (13) and (14) of subdivision (d) shall not be construed to require employers to provide reasonable accommodation to smokers, or to provide breakrooms for smokers or nonsmokers.

(f) (1) Except as otherwise provided in this subdivision, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), until the earlier of the following:

(A) January 1, 1997.

(B) The date of adoption of a regulation (i) by the Occupational Safety and Health Standards Board reducing the permissible

employee exposure level to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees or (ii) by the federal Environmental Protection Agency establishing a standard for reduction of permissible exposure to environmental tobacco smoke to an exposure level that will prevent anything other than insignificantly harmful effects to exposed persons.

(2) If a regulation specified in subparagraph (B) of paragraph (1) is adopted on or before January 1, 1997, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, such a regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(3) If a regulation specified in subparagraph (B) of paragraph (1) is not adopted on or before January 1, 1997, the exemptions specified in paragraphs (7) and (8) of subdivision (d) shall be inoperative on and after January 1, 1997, until such a regulation is adopted. Upon adoption of such a regulation on or after January 1, 1997, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, such a regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(g) The smoking prohibition set forth in this section shall constitute a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment and shall supersede and render unnecessary the local enactment or enforcement of local ordinances regulating the smoking of tobacco products in enclosed places of employment. Insofar as the smoking prohibition set forth in this section is applicable to all (100 percent of) places of employment within this state and, therefore, provides the maximum degree of coverage, the practical effect of this section is to eliminate the need of local governments to enact enclosed workplace smoking restrictions within their respective jurisdictions.

(h) Nothing in this section shall prohibit an employer from prohibiting smoking in an enclosed place of employment for any reason.

(i) The enactment of local regulation of smoking of tobacco products in enclosed places of employment by local governments shall be suspended only for as long as, and to the extent that, the (100 percent) smoking prohibition provided for in this section remains in effect. In the event this section is repealed or modified by subsequent legislative or judicial action so that the (100 percent) smoking prohibition is no longer applicable to all enclosed places of employment in California, local governments shall have the full right and authority to enforce previously enacted, and to enact and enforce new, restrictions on the smoking of tobacco products in enclosed places of employment within their jurisdictions, including a complete prohibition of smoking. Notwithstanding any other provision of this section, any area not defined as a "place of employment" or in which the smoking is not regulated pursuant to subdivision (d) or (e), shall be subject to local regulation of smoking of tobacco products.

(j) Any violation of the prohibition set forth in subdivision (b) is an infraction subject to subdivision (d) of Section 17 of the Penal Code and, notwithstanding Section 19.8 of the Penal Code, is punishable by a fine not to exceed one hundred dollars ($100) for a first violation, two hundred dollars ($200) for a second violation within one year, and five hundred dollars ($500) for a third and for each subsequent violation within one year. This subdivision shall be enforced by local law enforcement agencies including, but not limited to, local health departments, as determined by the local governing body.

(k) Notwithstanding Section 6309, the division shall not be required to respond to any complaint regarding the smoking of tobacco products in an enclosed space at a place of employment, unless the employer has been found guilty pursuant to subdivision (j) of a third violation of subdivision (b) within the previous year.

(*l*) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision of application, and to this end the provisions of this act are severable.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 311

An act to amend Sections 19414.5, 19596, 19605, 19607.5, 19610.5, and 19612.3 of, to add Sections 19525, 19592.5, 19596.2, and 19642 to, and to repeal and add Section 19601 of, the Business and Professions Code, and to repeal and add Sections 3853 and 3856.5 of the Food and Agricultural Code, relating to horseracing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 21, 1994. Filed with Secretary of State July 21, 1994.]

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

SECTION 1. Section 19414.5 of the Business and Professions Code is amended to read:

19414.5. (a) "Racing days" are days on which a licensed racing association or fair is authorized by the board to conduct horseracing.

(b) "Racing weeks" are seven consecutive days during which a licensed racing association or fair is authorized by the board to conduct horseracing for a minimum of five racing days. The board, however, upon joint petition of the association or fair and the organization representing horsemen participating in the meeting of that association or fair, may authorize the conduct of horseracing for a minimum of four racing days. Fractional racing weeks of four days or less may be authorized by the board at the beginning and end of any horseracing meeting. Fractional weeks may also be authorized during weeks containing holidays and during periods of overlap with thoroughbred meetings and fairs if the total number of weeks authorized by the board in any calendar year for each breed does not exceed the maximum annual allocation of racing weeks provided for in Article 6 (commencing with Section 19530). If a licensed racing association holds a split meeting, each part of the split meeting shall be deemed a horseracing meeting solely for the purposes of authorizing fractional racing weeks.

SEC. 2. Section 19525 is added to the Business and Professions Code, to read:

19525. No licensee or any other person may receive a commission, fee, gratuity, or any other form of compensation in connection with the sale or purchase of a racehorse, prospective racehorse, stallion, or brood mare, unless the purchaser and seller have agreed in writing to the payment of the commission, fee, gratuity, or other compensation. No contract or agreement shall be enforceable by way of an action or defense unless there is a writing sufficient to indicate that the party against whom enforcement is sought or his or her authorized agent or broker has agreed to the commission, fee, gratuity, or other form of compensation. Anyone who receives a commission, fee, gratuity or any other form of

compensation in violation of this section is subject to treble damages to the injured purchaser or seller. The board may suspend or revoke the license of any person who violates this section. Any transfer of an interest in a racehorse, prospective racehorse, stallion, or brood mare shall be accompanied by a written bill of sale setting forth the purchase price.

SEC. 3. Section 19592.5 is added to the Business and Professions Code, to read:

19592.5. In order to facilitate the intrastate transmission of racing programs, the board shall adopt regulations that provide for the compatibility of parimutuel totalizator systems within the state, including uniform procedures for the issuance and cashing of parimutuel tickets.

SEC. 4. Section 19596 of the Business and Professions Code is amended to read:

19596. (a) Notwithstanding any other provision of law, the board may do any of the following:

(1) Authorize an association conducting a racing meeting in this state to accept wagers on the results of out-of-state feature races having a gross purse of at least fifty thousand dollars ($50,000) during the period the association is conducting the racing meeting on days when live races are being run.

(2) Authorize an association in this state to accept wagers on any stakes race conducted by the racing association that conducts the Kentucky Derby, the Preakness Stakes, or the Belmont Stakes, if the stakes race is conducted on the same day as the Kentucky Derby, the Preakness Stakes, or the Belmont Stakes, and if the association in this state that accepts those wagers is then conducting a live racing meeting.

(3) Authorize the inclusion of wagers authorized pursuant to this section in the parimutuel pools of the out-of-state association that conducts the races on which the wagers are placed.

(b) The board authorization may be granted under this section only if both of the following conditions are met:

(1) The authorization complies with federal laws, including, but not limited to, Chapter 57 (commencing with Section 3001) of Title 15 of the United States Code.

(2) Wagering is offered only within the racing enclosure and only within seven days of the running of the out-of-state feature race.

SEC. 5. Section 19596.2 is added to the Business and Professions Code, to read:

19596.2. Notwithstanding any other provision of law, a thoroughbred racing association may accept wagers on the results of out-of-country thoroughbred races during the period the association is conducting a race meeting without the consent of the organization that represents horsemen participating in the race meeting and without regard to the amount of purses, provided the association conducts not less than eight live races per day on days the association is licensed to conduct racing.

SEC. 6. Section 19601 of the Business and Professions Code is repealed.

SEC. 7. Section 19601 is added to the Business and Professions Code, to read:

19601. (a) Notwithstanding any other provision of law, a licensed association or fair that is conducting a live meeting in any racing zone may accept wagers on any race conducted in this state, if all of the following requirements are met:

(1) The association or fair that conducts the race and the association or fair that accepts wagers on that race have executed an agreement providing for the conditions for transmission of the audiovisual signal of the race and the amount of compensation, if any, to be paid to the association or fair conducting the transmitted race.

(2) The association or fair that conducts the racing meeting and the organization that is responsible for negotiating purse agreements, satellite wagering agreements, and all other business agreements on behalf of the horsemen participating in that racing meeting consent to the acceptance of the wagers. However, if consent is withheld, any party may appeal the withholding of consent to the board, which may determine that consent is not required.

(3) The association or fair conducts not less that eight races on days when the association or fair is licensed to conduct racing, except that fewer than eight live races per day may be conducted by the mutual agreement of the association or fair and the organization that is responsible for negotiating purse agreements, satellite wagering agreements, and all other business agreements on behalf of the horsemen participating in the racing meeting.

(4) Wagering is offered only within the association's or fair's racing inclosure or within the satellite wagering facility and only within seven days of the commencement of the racing program with the transmitted race.

(5) All wagers are included in the appropriate parimutuel pool at the racetrack of the association or fair where the race is conducted, or, at the election of the parties to the agreement required by paragraph (1), in the appropriate parimutuel pool of the racetrack of the association or fair that accepts the transmitted race.

(6) The association or fair accepting wagers on an out-of-zone transmitted race distributes the audiovisual signal of the race to, and accepts wagers from, all eligible satellite wagering facilities.

(b) Any association or fair accepting wagers under subdivision (a) shall deduct from the total amount handled in each conventional and exotic parimutuel pool on the transmitted race, the same percentages deducted pursuant to Article 9.5 (commencing with Section 19610) for races at its own meeting. However, if the wagers are from a quarter horse race meeting, then the amounts deducted shall be the same as for a quarter horse race meeting. Amounts deducted under this section, including amounts deducted from wagers on out-of-zone races within the inclosure of the association or fair, shall be distributed as provided under Section 19605.7 with

respect to wagers made within the northern zone, or Section 19605.71 with respect to wagers made within the central or southern zone, except that amounts distributed for purposes other than state license fees and fees payable to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis, and the California Diagnostic Veterinary Lab System shall be proportionally reduced by the amount of any fees paid as compensation to the association or fair conducting the transmitted race pursuant to subdivision (c). The method used to calculate the reduction in proportionate share shall be approved by the board. For wagers on out-of-zone races made within the association's or fair's inclosure, the percentage amount normally distributed as a satellite wagering facility commission, less any pro rata reduction required by this subdivision, shall be distributed instead as additional commissions and purses pursuant to Section 19605.8. Additionally, for all wagers on out-of-zone races, the percentage amount normally distributed for promotion of the program at satellite wagering facilities, less any pro rata reduction required by this subdivision, shall be distributed instead as additional commissions and purses pursuant to Section 19605.8.

(c) Nothing in this section precludes an association or fair from charging a fee as a condition of transmitting its races to another zone, except that any fee shall be allocated among all associations, fairs, and satellite wagering facilities receiving the transmitted race in proportion to the amount wagered at each location, and the fee shall not exceed 2.5 percent of the total amount wagered on each out-of-zone race. Any fees received by the association or fair that conducts the transmitted race shall be divided equally between commissions to the association or fair conducting the out-of-zone race and purses to horsemen that participate in the association's or fair's racing meeting.

(d) All breakage and unclaimed tickets, including unclaimed refunds, on wagers on out-of-zone races shall be distributed equally between the association or fair that accepts wagers on the transmitted race, and the horsemen, in the form of purses, who participate in the racing meeting of the association or fair that accepts wagers on the transmitted race.

(e) All wagers made pursuant to this section shall be considered to have been wagered at a satellite wagering facility and shall be excluded from total handle for the purposes of Section 19611.

(f) Notwithstanding Section 19530.5, satellite wagering facilities operated by a county fair, district agricultural association fair, or citrus fruit fair in the Counties of Kern, Fresno, or Tulare shall be considered northern zone facilities and shall receive their audiovisual signal from the association or fair conducting a racing meeting in the northern zone that is authorized to distribute the signal and accept wagers on central and southern zone races. Satellite wagering facilities operated by a county fair, district agricultural association, or citrus fruit fair in the Counties of Santa

Barbara or Ventura shall be considered central-southern zone facilities and shall receive the audiovisual signal from the association or fair conducting a racing meeting in the central or southern zone that is authorized to distribute the signal and accept wagers on central and southern zone races.

(g) All purse moneys derived from wagering on out-of-zone races at fair racing meetings conducted within the northern zone shall be distributed to all breeds of horses participating in the fair meeting in direct proportion to the purse money generated by breed on live races conducted during the fair race meeting.

(h) During calendar periods when both a fair and a thoroughbred association conduct live racing, the thoroughbred association shall be the association authorized to distribute the signal and accept wagers on out-of-zone races. The amounts deducted under this section shall be distributed on any day of overlap as provided in Section 19607.5 subject to the agreements specified in paragraph (1) of subdivision (a), except that the applicable state license fee shall be at the rate or rates specified for nonfair meetings in subdivision (b) of Section 19605.7.

(i) During calendar periods when a thoroughbred association and any other breed association are conducting a racing meeting in the same zone, the thoroughbred association shall be the association authorized to distribute out-of-zone thoroughbred or fair races, except that the thoroughbred association may waive this right and allow the other breed racing association conducing a race meeting to distribute the signal and accept wagers on out-of-zone thoroughbred or fair races for any racing day or days. For the purposes of this subdivision, the combined central and southern zone shall be considered one zone.

(j) In order to encourage additional intrastate simulcasting, maximize state revenues, and further the purposes of this section, the board may adopt regulations to ensure that all horseracing programs conducted within the state are exposed to the maximum number of racing fans. The regulations may include, but are not limited to, the following:

(1) Establishing a minimum number of out-of-zone races that must be accepted by associations and fairs that contract to accept out-of-zone wagers pursuant to subdivision (a).

(2) Requiring associations, fairs, and satellite wagering facilities to present out-of-zone audiovisual signals to racing fans in substantially the same manner as in-zone signals are presented.

(3) Giving racing fans the opportunity to make wagers on out-of-zone racing programs at all parimutuel terminals where wagers on in-zone races are accepted.

SEC. 8. Section 19605 of the Business and Professions Code is amended to read:

19605. (a) Notwithstanding any other provision of law, the board may authorize an association licensed to conduct a racing meeting in the northern zone to operate a satellite wagering facility for

wagering on races conducted in the northern zone at its racetrack inclosure subject to all of the conditions specified in Section 19605.3, and may authorize an association licensed to conduct a racing meeting in the central or southern zone to operate a satellite wagering facility for wagering on races conducted in the central or southern zone at its racetrack inclosure subject to the conditions specified in subdivisions (a) to (e), inclusive, of Section 19605.3 and the conditions and limitations set forth in Section 19605.6.

(b) Notwithstanding any other provision of law, no satellite wagering facility, except a facility that is located at a track where live racing is conducted, shall be located within 20 miles of any existing satellite wagering facility or of any track where a racing association conducts a live racing meeting. However, in the northern zone, a racing association or any existing satellite wagering facility may waive the prohibition contained in this subdivision and may consent to the location of another satellite wagering facility within 20 miles of the facility or track. This subdivision does not apply to an association described in subdivision (g) of Section 19531.

(c) Notwithstanding subdivision (b), the Department of Food and Agriculture may approve not more than three satellite wagering facilities that are licensed jointly to the 1a District Agricultural Association and the 5th District Agricultural Association and that are located on the fairgrounds of the 1a District Agricultural Association or within the boundaries of the City and County of San Francisco. Before a satellite wagering facility may be licensed for the 1997 and subsequent calendar years under this subdivision, the department shall conduct a one-year test at the proposed site in order to determine the impact of the proposed facility on total state parimutuel revenues and on attendance and wagering at existing racetracks and fair satellite wagering facilities in the Counties of Alameda, San Mateo, Santa Clara, and Solano. Notwithstanding Section 19605.1, a satellite wagering facility may be located on property leased to one or both fairs. Notwithstanding any other provision of law, the fairs may contract for the operation and management of a satellite wagering facility with an individual racing association or a partnership, joint venture, or other affiliation of two or more racing associations that are licensed to conduct thoroughbred meetings within the northern zone.

SEC. 9. Section 19607.5 of the Business and Professions Code is amended to read:

19607.5. (a) Notwithstanding any other provision of law, when both a fair and a thoroughbred association are licensed by the board to conduct live racing meetings within the northern zone during the same calendar period, signals of both racing programs shall be accepted at each live racing meeting within the northern zone and at all satellite wagering facilities eligible to receive these programs.

(b) Notwithstanding any other provision of law, in order to ensure that fairs which previously had an exclusive right to send their signals to satellite wagering facilities in the northern zone during periods of

overlap do not lose commission revenues from satellite wagering, each fair that conducts its meeting during the period described in subdivision (a) shall receive the following satellite wagering commissions:

(1) With respect to the 2nd District Agricultural Association in Stockton, the commissions payable to the fair from satellite wagering during the period described in subdivision (a) shall be the greater of any of the following:

(A) The actual commission earned by the fair from satellite wagering on its live races during that period.

(B) Fifty percent of the total combined satellite wagering commissions payable to the thoroughbred association and the fair during that period.

(C) One hundred ten percent of the satellite wagering commissions paid to the fair during its live racing meeting in 1990.

If the satellite wagering commissions received by the 2nd District Agricultural Association are less than the greater of the amounts specified in subparagraph (B) or (C), the thoroughbred association shall pay to the fair from amounts deducted from satellite wagering on its meeting and before distribution of any satellite wagering commissions and purses on its meeting, an amount equal to the difference between the actual satellite wagering commissions received by the fair in that year and the applicable amount from subparagraph (B) or (C). No additional satellite wagering commission shall be paid to the fair by an association unless the fair conducts live racing during the period described in subdivision (a).

(2) With respect to the California Exposition and State Fair in Sacramento, the commissions payable to the fair from satellite wagering during the period described in subdivision (a) shall be the greater of either of the following:

(A) The actual commission earned by the fair from satellite wagering on its live races during that period.

(B) Sixty percent of the total combined satellite wagering commissions payable to the thoroughbred association and the fair during that period.

If the satellite wagering commissions received by the California Exposition and State Fair are less than the amount described in (B), the thoroughbred association shall pay to the fair from amounts deducted from satellite wagering on its meeting and before distribution of any satellite wagering commissions and purses on its meeting, an amount equal to the difference between the actual satellite wagering commissions received by the fair in that year and the amount described in (B). No additional satellite wagering commission shall be paid to the fair by an association unless the fair conducts live racing during the period described in subdivision (a).

(c) During any periods described in subdivision (a), including periods of overlap for fairs not specified in subdivision (b), the thoroughbred association shall deduct the same percentage from the total amount wagered in its daily conventional and exotic parimutuel

pools as the percentage deducted by the fair meeting. The amounts deducted shall be distributed as otherwise provided in this article, with the following exceptions:

(1) If the percentages deducted from the conventional and exotic parimutuel pools of the thoroughbred association under this subdivision exceed the percentages deducted from the association's pools during periods other than those described under subdivision (a), the amount deducted which is equivalent to the difference between those percentages shall be distributed by the thoroughbred association equally between commissions and purses.

(2) If a thoroughbred association and the 2nd District Agricultural Association in Stockton or the California Exposition and State Fair in Sacramento both conduct live racing meetings during any period described in subdivision (a), the total amount deducted shall be distributed by both the association and fair in the percentages specified for fair meetings in subdivision (b) of Section 19605.7.

Nothing in this subdivision requires any portion of the additional deduction to be distributed pursuant to subdivision (c) of Section 19614.

(d) Notwithstanding any other provision of law, an association and fair that conduct their meeting pursuant to subdivision (b) shall combine the operating expenses incurred at satellite wagering facilities during the period described in subdivision (a). For purposes of this subdivision only, the combined satellite wagering operating expenses of the association and the fair during the period described in subdivision (a) shall not exceed the actual expenses, or 6 percent of the combined parimutuel pool at satellite wagering facilities, whichever is less.

(e) Notwithstanding Section 19606.4, it is the intent of the Legislature that during the period described in subdivision (a) the funds allocated pursuant to Section 19606.3 shall be used to bring purses at the fair racing meetings conducted by the 2nd District Agricultural Association and the California Exposition and State Fair to a level of at least 100 percent of purses for similar classes of horses at the private association which is conducting the simultaneous program.

SEC. 10. Section 19610.5 of the Business and Professions Code is amended to read:

19610.5. In addition to the amounts required to be paid as license fees under any other provision of this chapter, every association, except an association conducting a racing meeting pursuant to Section 19612.6 or 19614 or an association conducting a harness meeting or a quarter horse meeting, shall pay 1 percent of its exotic parimutuel pools, excluding wagering at a satellite wagering facility, to the state as an additional license fee.

SEC. 11. Section 19612.3 of the Business and Professions Code is amended to read:

19612.3. (a) Notwithstanding any other provision of law, with respect to harness racing associations other than those conducting a

meeting pursuant to Section 19612.6, an additional 1 percent of the parimutuel pool shall be retained and shall be distributed equally between purses and commissions.

(b) With respect to harness racing associations conducting a meeting pursuant to Section 19549.2 or 19612.6, an additional 1 percent of the parimutuel pool shall be retained and shall be distributed as additional commissions.

SEC. 12. Section 19642 is added to the Business and Professions Code, to read:

19642. Cash vouchers that are not redeemed within 365 days of the close of the racing meeting at which the voucher was purchased shall be distributed to a nonprofit organization designated by the board for purposes of maintaining a data base of horseracing information to further the purposes of Section 19444.

SEC. 13. Section 3853 of the Food and Agricultural Code is repealed.

SEC. 14. Section 3853 is added to the Food and Agricultural Code, to read:

3853. District 1a is the County of San Mateo and the City and County of San Francisco.

SEC. 15. Section 3856.5 of the Food and Agricultural Code is repealed.

SEC. 16. Section 3856.5 is added to the Food and Agricultural Code, to read:

3856.5. District 5 is the City and County of San Francisco.

SEC. 17. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

State revenues from parimutuel horseracing have increased in 1994 due largely to legislation expanding intrastate simulcasting of horseracing (Chapter 577 of the Statutes of 1993), which was repealed on July 1, 1994. In order for the state to continue to receive needed revenues from intrastate simulcasting as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 312

An act making an appropriation for the payment of judgments and settlement claims against the State of California, and declaring the urgency thereof, to take effect immediately.

[Became law without Governor's signature. Filed with Secretary of State August 12, 1994.]

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

SECTION 1. The sum of one hundred seventy-eight thousand one hundred twenty-five dollars ($178,125) is hereby appropriated from the General Fund to the Department of Justice to pay any judgment or settlement claim, including any applicable interest payment, for Butt v. Richmond Unified School District (Contra Costa Superior Court Case No. C-91-01645). Any amounts appropriated in excess of the amounts actually required for the payment of that judgment or settlement claim shall revert to the General Fund on June 30 of the fiscal year in which the payments are made.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to pay judgments and settlement claims against the state and end hardship to claimants as quickly as possible, it is necessary for this act to take effect immediately.

CHAPTER 313

An act to repeal Section 5 of Chapter 116 of the Statutes of 1993, relating to housing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 15, 1994. Filed with Secretary of State August 15, 1994.]

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

SECTION 1. Section 5 of Chapter 116 of the Statutes of 1993 is repealed.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to delete the authority for submission of the California Housing and Jobs Investments Bond Act to the voters at the November 8, 1994, statewide general election, it is necessary that this act take effect immediately.

CHAPTER 314

An act to amend Sections 11471, 11488.1, 11488.6, and 11492 of, to add Sections 11469 and 11495 to, to repeal Sections 11471.1, 11473.2, and 11473.3 of, to repeal and amend Section 11489 of, and to repeal and add Sections 11470, 11488, 11488.4, 11488.5, and 11494 of, the Health and Safety Code, relating to asset forfeiture, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 19, 1994. Filed with Secretary of State August 19, 1994.]

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

SECTION 1. Section 11469 is added to the Health and Safety Code, to read:

11469. In order to ensure the proper utilization of the laws permitting the seizure and forfeiture of property under this chapter, the Legislature hereby establishes the following guidelines:

(a) Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens.

(b) No prosecutor's or sworn law enforcement officer's employment or salary shall be made to depend upon the level of seizures or forfeitures he or she achieves.

(c) Whenever appropriate, prosecutors should seek criminal sanctions as to the underlying criminal acts which give rise to the forfeiture action.

(d) Seizing agencies shall have a manual detailing the statutory grounds for forfeiture and all applicable policies and procedures. The manual shall include procedures for prompt notice to interestholders, the expeditious release of seized property, where appropriate, and the prompt resolution of claims of innocent ownership.

(e) Seizing agencies shall implement training for officers assigned to forfeiture programs, which training should be ongoing.

(f) Seizing agencies shall avoid any appearance of impropriety in the sale or acquisition of forfeited property.

(g) Seizing agencies shall not put any seized or forfeited property into service.

(h) Unless otherwise provided by law, forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.

(i) Seizing agencies shall ensure that seized property is protected and its value preserved.

(j) Although civil forfeiture is intended to be remedial by

removing the tools and profits from those engaged in the illicit drug trade, it can have harsh effects on property owners in some circumstances. Therefore, law enforcement shall seek to protect the interests of innocent property owners, guarantee adequate notice and due process to property owners, and ensure that forfeiture serves the remedial purpose of the law.

SEC. 2. Section 11470 of the Health and Safety Code, as amended by Section 1 of Chapter 924 of the Statutes of 1987, is repealed.

SEC. 3. Section 11470 is added to the Health and Safety Code, to read:

11470. The following are subject to forfeiture:

(a) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this division.

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this division.

(c) All property except real property or a boat, airplane, or any vehicle which is used, or intended for use, as a container for property described in subdivision (a) or (b).

(d) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this division.

(e) The interest of any registered owner of a boat, airplane, or any vehicle other than an implement of husbandry, as defined in Section 36000 of the Vehicle Code, which has been used as an instrument to facilitate the possession for sale or sale of 14.25 grams or more of heroin or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or a substance containing 14.25 grams or more of heroin or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or 14.25 grams or more of a substance containing heroin or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or 28.5 grams or more of Schedule I controlled substances except marijuana, peyote, or psilocybin; 10 pounds dry weight or more of marijuana, peyote, or psilocybin; or 28.5 grams or more of cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or a substance containing 28.5 grams or more of cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or 57 grams or more of a substance containing cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or 28.5 grams or more of Schedule II controlled substances. No interest in a vehicle which may be lawfully driven on the highway with a class C, class M1, or class M2 license, as prescribed in Section 12804 of the Vehicle Code, may be forfeited under this subdivision if there is a community property interest in the vehicle by a person other than the defendant and the vehicle is the sole class C, class M1, or class M2 vehicle available to the defendant's immediate family.

(f) All moneys, negotiable instruments, securities, or other things

of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11382 of this code, or Section 182 of the Penal Code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first.

(g) The real property of any property owner who is convicted of violating Section 11366, 11366.5, or 11366.6 with respect to that property. However, property which is used as a family residence or for other lawful purposes, or which is owned by two or more persons, one of whom had no knowledge of its unlawful use, shall not be subject to forfeiture.

(h) Subject to the requirements of Section 11488.5 and except as further limited by this subdivision to protect innocent parties who claim a property interest acquired from a defendant, all right, title, and interest in any personal property described in this section shall vest in the state upon commission of the act giving rise to forfeiture under this chapter, if the state or local governmental entity proves a violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11382 in accordance with the burden of proof set forth in paragraph (1) of subdivision (i) of Section 11488.4 or, in the case of cash or negotiable instruments in excess of twenty-five thousand dollars ($25,000), paragraph (4) of subdivision (i) of Section 11488.4.

The operation of the special vesting rule established by this subdivision shall be limited to circumstances where its application will not defeat the claim of any person, including a bona fide purchaser or encumbrancer who, pursuant to Section 11488.5, 11488.6, or 11489, claims an interest in the property seized, notwithstanding that the interest in the property being claimed was acquired from a defendant whose property interest would otherwise have been subject to divestment pursuant to this subdivision.

SEC. 4. Section 11471 of the Health and Safety Code is amended to read:

11471. Property subject to forfeiture under this division may be seized by any peace officer upon process issued by any court having jurisdiction over the property. Seizure without process may be made if any of the following situations exist:

(a) The seizure is incident to an arrest or a search under a search warrant.

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture

proceeding based upon this division.

(c) There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.

(d) There is probable cause to believe that the property was used or is intended to be used in violation of this division.

(e) Real property subject to forfeiture may not be seized, absent exigent circumstances, without notice to the interested parties and a hearing to determine that seizure is necessary to preserve the property pending the outcome of the proceedings. At the hearing, the prosecution shall bear the burden of establishing that probable cause exists for the forfeiture of the property and that seizure is necessary to preserve the property pending the outcome of the forfeiture proceedings. The court may issue seizure orders pursuant to this section if it finds that seizure is warranted or pendente lite orders pursuant to Section 11492 if it finds that the status quo or value of the property can be preserved without seizure.

(f) Where business records are seized in conjunction with the seizure of property subject to forfeiture, the seizing agency shall, upon request, provide copies of the records to the person, persons, or business entity from whom such records were seized.

SEC. 5. Section 11471.1 of the Health and Safety Code is repealed.

SEC. 6. Section 11473.2 of the Health and Safety Code is repealed.

SEC. 7. Section 11473.3 of the Health and Safety Code, as amended by Section 2 of Chapter 924 of the Statutes of 1987, is repealed.

SEC. 8. Section 11488 of the Health and Safety Code, as amended by Section 3 of Chapter 924 of the Statutes of 1987, is repealed.

SEC. 9. Section 11488 is added to the Health and Safety Code, to read:

11488. (a) Any peace officer of this state, subsequent to making or attempting to make an arrest for a violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11382 of this code, or Section 182 of the Penal Code insofar as the offense involves manufacture, sale, purchase for the purpose of sale, possession for sale or offer to manufacture or sell, or conspiracy to commit one of those offenses, may seize any item subject to forfeiture under subdivisions (a) to (f), inclusive, of Section 11470. The peace officer shall also notify the Franchise Tax Board of a seizure where there is reasonable cause to believe that the value of the seized property exceeds five thousand dollars ($5,000).

(b) Receipts for property seized pursuant to this section shall be delivered to any person out of whose possession such property was seized, in accordance with Section 1412 of the Penal Code. In the event property seized was not seized out of anyone's possession, receipt for the property shall be delivered to the individual in possession of the premises at which the property was seized.

(c) There shall be a presumption affecting the burden of proof that the person to whom a receipt for property was issued is the owner thereof. This presumption may, however, be rebutted at the

forfeiture hearing specified in Section 11488.5.

SEC. 10. Section 11488.1 of the Health and Safety Code is amended to read:

11488.1. Property seized pursuant to Section 11488 may, where appropriate, be held for evidence. The Attorney General or the district attorney for the jurisdiction involved shall institute and maintain the proceedings.

SEC. 11. Section 11488.4 of the Health and Safety Code, as amended by Section 4 of Chapter 924 of the Statutes of 1987, is repealed.

SEC. 12. Section 11488.4 of the Health and Safety Code, as added by Section 5 of Chapter 924 of the Statutes of 1987, is repealed.

SEC. 13. Section 11488.4 is added to the Health and Safety Code, to read:

11488.4. (a) Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter, the Attorney General or district attorney shall file a petition of forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense or in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which the real property is located.

A petition of forfeiture under this subdivision shall be filed as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture, or as soon as practicable, but in any case within one year of the filing by the Attorney General or district attorney of a lis pendens or other process against the property, whichever is earlier.

(b) Physical seizure of assets shall not be necessary in order to have that particular asset alleged to be forfeitable in a petition under this section. The prosecuting attorney may seek protective orders for any asset pursuant to Section 11492.

(c) The Attorney General or district attorney shall make service of process regarding this petition upon every individual designated in a receipt issued for the property seized. In addition, the Attorney General or district attorney shall cause a notice of the seizure, if any, and of the intended forfeiture proceeding, as well as a notice stating that any interested party may file a verified claim with the superior court of the county in which the property was seized or if the property was not seized, a notice of the initiation of forfeiture proceedings with respect to any interest in the property seized or

subject to forfeiture, to be served by personal delivery or by registered mail upon any person who has an interest in the seized property or property subject to forfeiture other than persons designated in a receipt issued for the property seized. Whenever a notice is delivered pursuant to this section, it shall be accompanied by a claim form as described in Section 11488.5 and directions for the filing and service of a claim.

(d) An investigation shall be made by the law enforcement agency as to any claimant to a vehicle, boat, or airplane whose right, title, interest, or lien is of record in the Department of Motor Vehicles or appropriate federal agency. If the law enforcement agency finds that any person, other than the registered owner, is the legal owner thereof, and such ownership did not arise subsequent to the date and time of arrest or notification of the forfeiture proceedings or seizure of the vehicle, boat, or airplane, it shall forthwith send a notice to the legal owner at his or her address appearing on the records of the Department of Motor Vehicles or appropriate federal agency.

(e) When a forfeiture action is filed, the notices shall be published once a week for three successive weeks in a newspaper of general circulation in the county where the seizure was made or where the property subject to forfeiture is located.

(f) All notices shall set forth the time within which a claim of interest in the property seized or subject to forfeiture is required to be filed pursuant to Section 11488.5.

(g) Nothing contained in this chapter shall preclude a person, other than a defendant, claiming an interest in property actually seized from moving for a return of property if that person can show standing by proving an interest in the property not assigned subsequent to the seizure or filing of the forfeiture petition.

(h) If there is an underlying or related criminal action, a defendant may move for the return of the property on the grounds that there is not probable cause to believe that the property is forfeitable pursuant to subdivisions (a) to (g), inclusive, of Section 11470 and is not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter. The motion may be made prior to, during, or subsequent to the preliminary examination. If made subsequent to the preliminary examination, the Attorney General or district attorney may submit the record of the preliminary hearing to establish that probable cause exists to believe that the underlying or related criminal violations have occurred.

Within 15 days after a defendant's motion is granted, the people may file a petition for a writ of mandate or prohibition seeking appellate review of the ruling.

(i) (1) With respect to property described in subdivisions (e) and (g) of Section 11470 for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt that the

property for which forfeiture is sought was used, or intended to be used, to facilitate a violation of one of the offenses enumerated in subdivision (f) or (g) of Section 11470.

(2) In the case of property described in subdivision (f) of Section 11470, except cash, negotiable instruments, or other cash equivalents of a value of not less than twenty-five thousand dollars ($25,000), for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt that the property for which forfeiture is sought meets the criteria for forfeiture described in subdivision (f) of Section 11470.

(3) In the case of property described in paragraphs (1) and (2), a judgment of forfeiture requires as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in subdivision (f) or (g) of Section 11470 which offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notification of intention to seek forfeiture. If the defendant is found guilty of the underlying or related criminal offense, the issue of forfeiture shall be tried before the same jury, if the trial was by jury, or tried before the same court, if trial was by court, unless waived by all parties. The issue of forfeiture shall be bifurcated from the criminal trial and tried after conviction unless waived by all the parties.

(4) In the case of property described in subdivision (f) of Section 11470 that is cash or negotiable instruments of a value of not less than twenty-five thousand dollars ($25,000), the state or local governmental entity shall have the burden of proving by clear and convincing evidence that the property for which forfeiture is sought is such as is described in subdivision (f) of Section 11470. There is no requirement for forfeiture thereof that a criminal conviction be obtained in an underlying or related criminal offense.

(5) If there is an underlying or related criminal action, and a criminal conviction is required before a judgment of forfeiture may be entered, the issue of forfeiture shall be tried in conjunction therewith. Trial shall be by jury unless waived by all parties. If there is no underlying or related criminal action, the presiding judge of the superior court shall assign the action brought pursuant to this chapter for trial.

(j) The Attorney General or the district attorney of the county in which property is subject to forfeiture under Section 11470 may, pursuant to this subdivision, order forfeiture of personal property not exceeding twenty-five thousand dollars ($25,000) in value. The Attorney General or district attorney shall provide notice of proceedings under this subdivision pursuant to subdivisions (c), (d), (e), and (f), including:

(1) A description of the property.

(2) The appraised value of the property.

(3) The date and place of seizure or location of any property not seized but subject to forfeiture.

(4) The violation of law alleged with respect to forfeiture of the property.

(5) The instructions for filing and serving a claim with the Attorney General or the district attorney pursuant to Section 11488.5 and time limits for filing a claim and claim form.

If no claims are timely filed, the Attorney General or the district attorney shall prepare a written declaration of forfeiture of the subject property to the state and dispose of the property in accordance with Section 11489. A written declaration of forfeiture signed by the Attorney General or district attorney under this subdivision shall be deemed to provide good and sufficient title to the forfeited property. The prosecuting agency ordering forfeiture pursuant to this subdivision shall provide a copy of the declaration of forfeiture to any person listed in the receipt given at the time of seizure and to any person personally served notice of the forfeiture proceedings.

If a claim is timely filed, then the Attorney General or district attorney shall file a petition of forfeiture pursuant to this section within 30 days of the receipt of the claim. The petition of forfeiture shall then proceed pursuant to other provisions of this chapter, except that no additional notice need be given and no additional claim need be filed.

(k) If in any underlying or related criminal action or proceeding, in which a petition for forfeiture has been filed pursuant to this section, and a criminal conviction is required before a judgment of forfeiture may be entered, the defendant willfully fails to appear as required, there shall be no requirement of a criminal conviction as a prerequisite to forfeiture. In these cases, forfeiture shall be ordered as against the defendant and judgment entered upon default, upon application of the state or local governmental entity. In its application for default, the state or local governmental entity shall be required to give notice to the defendant's attorney of record, if any, in the underlying or related criminal action, and to make a showing of due diligence to locate the defendant. In moving for a default judgment pursuant to this subdivision, the state or local governmental entity shall be required to establish a prima facie case in support of its petition for forfeiture.

SEC. 14. Section 11488.5 of the Health and Safety Code, as amended by Section 6 of Chapter 924 of the Statutes of 1987, is repealed.

SEC. 14.5. Section 11488.5 of the Health and Safety Code, as added by Section 7 of Chapter 924 of the Statutes of 1987, is repealed.

SEC. 15. Section 11488.5 is added to the Health and Safety Code, to read:

11488.5. (a) (1) Any person claiming an interest in the property seized pursuant to Section 11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 days from the date of the first publication of the notice of seizure, if that person was not personally served or served by mail, or within 30 days after

receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized or, if there was no seizure, in which the property is located, a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 30 days of the filing of the claim. The Judicial Council shall develop and approve official forms for the verified claim that is to be filed pursuant to this section. The official forms shall be drafted in nontechnical language, in English and in Spanish, and shall be made available through the office of the clerk of the appropriate court.

(2) Any person who claims that the property was assigned to him or to her prior to the seizure or notification of pending forfeiture of the property under this chapter, whichever occurs first, shall file a claim with the court and prosecuting agency pursuant to Section 11488.5 declaring an interest in that property and such interest shall be adjudicated at the forfeiture hearing. The property shall remain under control of the law enforcement or prosecutorial agency until the adjudication of the forfeiture hearing. Seized property shall be protected and its value shall be preserved pending the outcome of the forfeiture proceedings.

(3) The clerk of the court shall not charge or collect a fee for the filing of a claim in any case in which the value of the respondent property as specified in the notice is five thousand dollars ($5,000) or less.

(4) The claim of a law enforcement agency to property seized pursuant to Section 11488 or subject to forfeiture shall have priority over a claim to the seized or forfeitable property made by the Franchise Tax Board in a notice to withhold issued pursuant to Section 18817 or 26132 of the Revenue and Taxation Code.

(b) (1) If at the end of the time set forth in subdivision (a) there is no claim on file, the court, upon motion, shall declare the property seized or subject to forfeiture pursuant to subdivisions (a) to (g), inclusive, of Section 11470 forfeited to the state. In moving for a default judgment pursuant to this subdivision, the state or local governmental entity shall be required to establish a prima facie case in support of its petition for forfeiture.

(2) The clerk of the court shall dispose of the forfeited property as set forth in Section 11489.

(c) (1) If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases. Notice of the hearing shall be given in the same manner as provided in Section 11488.4. Such a verified claim or a claim filed pursuant to subdivision (j) of Section 11488.4 shall not be admissible in the proceedings regarding the underlying or related criminal offense set forth in subdivision (a) of Section 11488.

(2) The hearing shall be by jury, unless waived by consent of all parties.

(3) The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter.

(d) (1) At the hearing, the state or local governmental entity shall have the burden of establishing, pursuant to subdivision (i) of Section 11488.4, that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4.

(2) No interest in the seized property shall be affected by a forfeiture decree under this section unless the state or local governmental entity has proven that the owner of such interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4.

(e) The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided. The forfeiture hearing shall be conducted in accordance with Sections 220 to 222.5, inclusive, and Sections 224 to 234, inclusive, of the Code of Civil Procedure if a trial by jury, and by Sections 607 to 630, inclusive, of the Code of Civil Procedure if by the court. Unless the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person it determines is entitled thereto.

If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall order the seized property released to the claimant.

(f) All seized property which was the subject of a contested forfeiture hearing and which was not released by the court to a claimant shall be declared by the court to be forfeited to the state, provided the burden of proof required pursuant to subdivision (i) of Section 11488.4 has been met. The clerk of the court shall dispose of the forfeited property as set forth in Section 11489.

(g) All seized property which was the subject of the forfeiture hearing and which was not forfeited shall remain subject to any order to withhold issued with respect to the property by the Franchise Tax Board.

SEC. 16. Section 11488.6 of the Health and Safety Code is amended to read:

11488.6. (a) If the court or jury at the forfeiture hearing finds that the property is forfeitable pursuant to Section 11470, but does not find that a person having a valid ownership interest, which includes, but is not limited to, a valid lien, mortgage, security interest, or interest under a conditional sales contract acquired such interest with actual knowledge that the property was to be used for a purpose for which forfeiture is permitted, and the amount due such person is less than the appraised value of the property, such person may pay to the state or the local governmental entity which initiated the forfeiture proceeding the amount of the equity, which shall be deemed to be the difference between the appraised value and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon such payment, the state or local governmental entity shall relinquish all claims to the property. If the holder of the interest elects not to make such payment to the state or local governmental entity, the property shall be deemed forfeited to the state or local governmental entity and the ownership certificate shall be forwarded. The appraised value shall be determined as of the date judgment is entered on a wholesale basis either by agreement between the legal owner and the governmental entity involved, or if they cannot agree, then by the inheritance tax appraiser for the county in which the action is brought. A person having a valid ownership interest, which includes, but is not limited to, a valid lien, mortgage, security interest, or interest under a conditional sales contract shall be paid the appraised value of his or her interest in accordance with the provisions of Section 11489.

(b) If the amount due to a person having a valid ownership interest, which includes, but is not limited to, a valid lien, mortgage, security interest, or interest under a conditional sales contract is less than the value of the property and the person elects not to make payment to the governmental entity, the property shall be sold at public auction by the Department of General Services or by the local governmental entity which shall provide notice of such sale by one publication in a newspaper published and circulated in the city, community, or locality where the sale is to take place.

(c) The proceeds of sale pursuant to subdivision (b) shall be first distributed in accordance with the provisions of Section 11489.

SEC. 17. Section 11489 of the Health and Safety Code, as amended by Section 4 of Chapter 722 of the Statutes of 1992, is repealed.

SEC. 18. Section 11489 of the Health and Safety Code, as amended by Section 5 of Chapter 722 of the Statutes of 1992, is repealed.

SEC. 19. Section 11489 of the Health and Safety Code, as amended by Section 7 of Chapter 722 of the Statutes of 1992, is amended to read:

11489. Notwithstanding Section 11502 and except as otherwise provided in Section 11473, in all cases where the property is seized pursuant to this chapter and forfeited to the state or local governmental entity and, where necessary, sold by the Department of General Services or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows:

(a) To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the property, if any, up to the amount of his or her interest in the property, when the court declaring the forfeiture orders a distribution to that person.

(b) The balance, if any, to accumulate, and to be distributed and transferred quarterly in the following manner:

(1) To the state agency or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized under this chapter.

(2) The remaining funds shall be distributed as follows:

(A) Sixty-five percent to the state, local, or state and local law enforcement entities that participated in the seizure distributed so as to reflect the proportionate contribution of each agency.

(i) Fifteen percent of the funds distributed pursuant to this subparagraph shall be deposited in a special fund maintained by the county, city, or city and county of any agency making the seizure or seeking an order for forfeiture. This fund shall be used for the sole purpose of funding programs designed to combat drug abuse and divert gang activity, and shall wherever possible involve educators, parents, community-based organizations and local businesses, and uniformed law enforcement officers. Those programs that have been evaluated as successful shall be given priority. These funds shall not be used to supplant any state or local funds that would, in the absence of this clause, otherwise be made available to the programs.

It is the intent of the Legislature to cause the development and continuation of positive intervention programs for high-risk elementary and secondary schoolage students. Local law enforcement should work in partnership with state and local agencies and the private sector in administering these programs.

(ii) The actual distribution of funds set aside pursuant to clause (i) is to be determined by a panel consisting of the sheriff of the county, a police chief selected by the other chiefs in the county, and the district attorney and the chief probation officer of the county.

(B) Ten percent to the prosecutorial agency which processes the forfeiture action.

(C) Twenty-four percent to the General Fund. Notwithstanding Section 13340 of the Government Code, the moneys are hereby continuously appropriated to the General Fund. For the calendar

year beginning January 1, 1995, and ending December 31, 1995, all moneys deposited in the General Fund pursuant to this subparagraph, in an amount not to exceed ten million dollars ($10,000,000), shall be made available for school safety and security, upon appropriation by the Legislature, and shall be disbursed pursuant to Senate Bill 1255 of the 1993-94 Regular Session, as enacted.

(D) One percent to a private nonprofit organization composed of local prosecutors which shall use these funds for the exclusive purpose of providing a statewide program of education and training for prosecutors and law enforcement officers in ethics and the proper use of laws permitting the seizure and forfeiture of assets under this chapter.

(c) Notwithstanding Item 0820-101-469 of the Budget Act of 1985 (Chapter 111 of the Statutes of 1985), all funds allocated to the Department of Justice pursuant to subparagraph (A) of paragraph (2) of subdivision (b) shall be deposited into the Department of Justice Special Deposit Fund–State Asset Forfeiture Account and used for the law enforcement efforts of the state or for state or local law enforcement efforts pursuant to Section 11493.

All funds allocated to the Department of Justice by the federal government under its Federal Asset Forfeiture program authorized by the Comprehensive Crime Control Act of 1984 may be deposited directly into the Narcotics Assistance and Relinquishment by Criminal Offender Fund and used for state and local law enforcement efforts pursuant to Section 11493.

Funds which are not deposited pursuant to the above paragraph shall be deposited into the Department of Justice Special Deposit Fund-Federal Asset Forfeiture Account.

(d) All the funds distributed to the state or local governmental entity pursuant to subparagraphs (A) and (B) of paragraph (2) of subdivision (b) shall not supplant any state or local funds that would, in the absence of this subdivision, be made available to support the law enforcement and prosecutorial efforts of these agencies.

The court shall order the forfeiture proceeds distributed to the state, local, or state and local governmental entities as provided in this section.

For the purposes of this section, "local governmental entity" means any city, county, or city and county in this state.

(e) This section shall become operative on January 1, 1994.

SEC. 20. Section 11492 of the Health and Safety Code is amended to read:

11492. (a) Concurrent with, or subsequent to, the filing of the petition, the prosecuting agency may move the superior court for the following pendente lite orders to preserve the status quo or value of the property alleged in the complaint for forfeiture.

(1) An injunction to restrain all interested parties and enjoin them from transferring, encumbering, hypothecating, or otherwise disposing of that property.

(2) Appointment of a receiver to take possession of, care for, manage, and operate the assets and properties so that the property may be maintained and preserved.

(3) Order an interlocutory sale of the property named in the petition when the property is liable to perish, to waste, or to be significantly reduced in value, or when the expenses of maintaining the property are disproportionate to the value thereof, and the proceeds thereof shall be deposited with the court or as directed by the court pending determination of the forfeiture proceeding.

(b) No preliminary injunction may be granted, receiver appointed, or interlocutory sale ordered without notice to the interested parties and a hearing to determine that the order is necessary to preserve the property named in the petition, pending the outcome of the proceedings, and that there is probable cause to believe that the property is subject to forfeiture under Section 11470. However, a temporary restraining order may issue pending that hearing pursuant to the provisions of Section 527 of the Code of Civil Procedure.

(c) Notwithstanding any other provision of law, the court in granting these motions may order a surety bond or undertaking to preserve the property interests of the interested parties.

SEC. 21. Section 11494 of the Health and Safety Code is repealed.

SEC. 22. Section 11494 is added to the Health and Safety Code, to read:

11494. In the case of any property seized or forfeiture proceeding initiated before January 1, 1994, the proceeding to forfeit the property and the distribution of any forfeited property shall be subject to the provisions of this chapter in effect on December 31, 1993, as if those sections had not been repealed, replaced, or amended.

SEC. 23. Section 11495 is added to the Health and Safety Code, to read:

11495. (a) The funds received by the law enforcement agencies under Section 11489 shall be deposited into an account maintained by the Controller, county auditor, or city treasurer. These funds shall be distributed to the law enforcement agencies at their request. The Controller, auditor, or treasurer shall maintain a record of these disbursements which records shall be open to public inspection, subject to the privileges contained in Sections 1040, 1041, and 1042 of the Evidence Code.

(b) Upon request of the governing body of the jurisdiction in which the distributions are made, the Controller, auditor, or treasurer shall conduct an audit of these funds and their use. In the case of the state, the governing body shall be the Legislature.

(c) Each year, the Attorney General shall publish a report which sets forth the following information for the state, each county, each city, and each city and county:

(1) The number of forfeiture actions initiated.

(2) The number of cases and the administrative number or court

docket number of each case for which forfeiture was ordered or declared.

(3) The value of the assets forfeited.

(4) The recipients of the forfeited assets, the amounts received, and the date of the disbursement.

(d) The Attorney General shall develop administrative guidelines for the collection and publication of the information required in subdivision (c).

(e) The Attorney General's report shall cover the calendar year and shall be made no later than March 1 of each year beginning with the year after the enactment of this law.

SEC. 24. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 25. It is the intent of the Legislature in repealing Sections 11470, 11473.3, 11488, 11488.4, and 11488.5 of the Health and Safety Code, as set forth in Sections 2, 7, 8, 11, 12, 14, and 14.5 of this act, to reduce the confusion and ambiguity which presently exist with respect to which, if any, version of those sections is operative.

SEC. 26. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to effectively implement the provisions relating to the forfeiture and seizure of property involved in, or purchased with the proceeds from, a controlled substance offense, it is necessary that this act take effect immediately.

CHAPTER 315

An act relating to elected officials, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 19, 1994. Filed with Secretary of State August 19, 1994.]

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

SECTION 1. Notwithstanding Section 10220 of the Elections Code, in the case of candidates for Justice of the Supreme Court and court of appeal whose names appear on the November 8, 1994, general election ballot, underneath each ballot heading there shall appear the words "Shall (name of justice) be elected to the office for a _____ year term as provided by law?" The requirements of Section 10220 shall be applicable in all other respects.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify certain ambiguities in the law in time for the November 8, 1994, general election, it is necessary that this act take effect immediately.

CHAPTER 316

An act to amend Section 10094.2 of, and to add Chapter 11 (commencing with Section 10108) to Part 1 of Division 2 of, the Insurance Code, relating to insurance.

[Approved by Governor August 21, 1994. Filed with Secretary of State August 22, 1994.]

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

SECTION 1. Section 10094.2 of the Insurance Code is amended to read:

10094.2. The facility shall, pursuant to regulations adopted by the commissioner, provide for a method whereby insurers who voluntarily write basic property insurance on risks located in areas designated as brush hazard areas by the Pacific Fire Rating Bureau will, to that extent, be proportionately relieved of the liability to participate in a plan adopted pursuant to this chapter. Furthermore, the facility shall, pursuant to regulations adopted by the commissioner, provide for a method whereby insurers who voluntarily write basic property insurance or business owners package insurance on risks located in areas designated as inner-city

areas by the commissioner will, to that extent, be proportionately relieved of the liability to participate in a plan adopted pursuant to this chapter. Nothing in this chapter shall preclude adoption of a plan or plans to allow proportionate credit for voluntary writings in other areas or for other classes of insurance.

SEC. 2. Chapter 11 (commencing with Section 10108) is added to Part 1 of Division 2 of the Insurance Code, to read:

CHAPTER 11. SMALL BUSINESS GUIDE TO COMMERCIAL INSURANCE

10108. (a) The commissioner shall develop a pamphlet which provides information to small business owners and others on the key features of, and suggested ways of, purchasing commercial property insurance. The commissioner may develop this pamphlet with the assistance of an advisory panel consisting of persons representing small business owners, insurers, consumer organizations, and other persons deemed necessary by the commissioner.

(b) The pamphlet shall be completed by July 1, 1995, and to the extent feasible, copies shall be made available to persons operating small businesses, business groups, chambers of commerce, and other persons and groups.

(c) The pamphlet shall provide information on the key features of commercial property insurance and recommend steps for purchasing this insurance. The pamphlet shall include, but not be limited to, providing information on the following:

(1) Various types of commercial insurance.

(2) Limits of liability in policies, including that for the following:

(A) Structures.

(B) Personal property.

(C) Inventory.

(D) Business interruption.

(3) Deductibles.

10108.1. (a) As used in this chapter, "policy of commercial property insurance" has the same meaning as defined in Section 675.5.

(b) As used in this chapter, "insurer" has the same meaning as defined in Section 10091.

CHAPTER 317

An act to amend Sections 19702 and 19705 of the Business and Professions Code, relating to mule racing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 21, 1994. Filed with Secretary of State August 22, 1994.]

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

SECTION 1. Section 19702 of the Business and Professions Code is amended to read:

19702. The board shall administer this chapter and shall issue a license for the conducting of a mule racing meeting or mule races.

SEC. 2. Section 19705 of the Business and Professions Code is amended to read:

19705. Associations licensed pursuant to this chapter shall deduct the applicable license fees, commissions, and purses in the same percentages as provided for in Article 9.5 (commencing with Section 19610) of Chapter 4. Associations may also deduct an additional amount of up to 3 percent on multiple wagering pools in the same manner as provided for by Section 19614.2.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for this act to apply to the 1994 summer fair racing season, it is necessary that this act take effect immediately.

CHAPTER 318

An act to amend Section 25503.15, and to repeal Sections 23358.1, 23358.5, and 23358.6 of, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor August 21, 1994. Filed with Secretary of State August 22, 1994.]

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

SECTION 1. Section 23358.1 of the Business and Professions Code is repealed.

SEC. 2. Section 23358.5 of the Business and Professions Code is repealed.

SEC. 3. Section 23358.6 of the Business and Professions Code is repealed.

SEC. 4. Section 25503.15 of the Business and Professions Code is amended to read:

25503.15. (a) Notwithstanding any other provision of this division, a winegrower who manufactures, produces, bottles, processes, imports, or sells wine only, or any officer, director, or agent of that person, may hold the ownership of any interest in any on-sale license, or the business conducted under that license, provided that the person or the officer, director, or agent of that person, shall have entered into an undertaking approved by the department stating both of the following:

(1) That neither that person nor any officer, director, or agent of that person shall sell or furnish to the holder of the license any wine, or permit the sale pursuant to that license of any wine, manufactured, produced, bottled, processed, imported, or sold by that person or that person's principal for as long as that ownership continues.

(2) That neither that person nor any officer, director, or agent of that person shall enter into any collusive scheme whereby he or she unfairly sells or promotes, in his or her on-sale businesses, the wine of another winegrower who manufactures, produces, bottles, processes, imports, or sells wine only, in return for his or her wine being unfairly sold or promoted in the on-sale businesses of that winegrower.

(b) Notwithstanding any other provision of this division, any licensed winegrower or any officer, director, or agent of that person, may hold, directly or indirectly, the ownership of any interest in an on-sale license, provided that each of the following conditions is met:

(1) The licensed on-sale premises are licensed as a bona fide public eating place as defined in Section 23038, or as a bona fide bed and breakfast inn as defined in Section 24045.11.

(2) The licensed on-sale premises purchases all alcoholic beverages sold and served at the on-sale licensed premises only from California wholesale licensees, unless one of the following conditions is met:

(A) The wine purchased is produced or bottled by, or produced and packaged for, the same licensed winegrower that holds an interest in the on-sale license.

(B) The wine is produced or bottled by, and is purchased from, a licensed winegrower who sells no more than 125,000 gallons of wine per year for distribution in this state under all brands or trade names owned by that winegrower.

(C) The wine is purchased by an on-sale licensee in whose on-sale license a licensed winegrower holds an interest, provided that the winegrower sells no more than 125,000 gallons of wine per year for distribution in this state under all brands or trade names owned by that winegrower.

(3) The licensed winegrower and any officer, director, or agent of that person do not sell and serve the wine products produced or bottled under any brand or trade name owned by that winegrower,

whether individually or in the aggregate, through more than two on-sale licensed premises in which any of them holds an ownership interest.

(4) The number of wine items by brand offered for sale by the on-sale licensed premises that are produced, bottled, processed, imported, or sold by the licensed winegrower or by any person holding any interest in the winegrower does not exceed 15 percent of the total wine items by brand listed and offered for sale in the licensed bona fide public eating place selling and serving that wine. This paragraph shall not apply to a bona fide bed and breakfast inn.

(c) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exceptions established by this section to the general prohibition against tied interests must be limited to their express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

CHAPTER 319

An act to amend Sections 54685, 54685.1, 54685.3, 54685.9, and 54686.2 of the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 21, 1994. Filed with Secretary of State August 22, 1994.]

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

SECTION 1. Section 54685 of the Education Code is amended to read:

54685. (a) The Legislature finds that many public school pupils enrolled in preschool, kindergarten, and grades 1 and 2 arrive at school with a wide variety of abilities and experiences. Many have been unable to succeed in traditional school programs.

(b) The Legislature also finds and declares that there is a need to do all of the following:

(1) To establish a system to assess pupils in preschool, kindergarten, and grades 1 and 2 to establish developmental stages and adapt instruction to prevent school failure.

(2) To implement developmentally appropriate instructional programs to reduce the frequency and severity of learning problems for these pupils in later years.

(3) To reduce the likelihood that these pupils eventually will need

to be placed in remedial programs with higher costs.

(4) To help schools adjust curriculum and instruction to meet the needs of these pupils.

(c) The Legislature further finds and declares that the Early Intervention for School Success Program is a model capable of providing a comprehensive range of materials and services to identify developmental stages and increase school success in pupils in preschool, kindergarten, and grades 1 and 2 by helping schools provide individually and developmentally appropriate instruction.

SEC. 2. Section 54685.1 of the Education Code is amended to read:

54685.1. It is the intent of the Legislature to do all of the following:

(a) To continue the Early Intervention for School Success Program.

(b) To implement the program at 300 public schoolsites within the state between July 1, 1994, and June 30, 1999.

(c) To enable school personnel to acquire the skills necessary to determine developmental stages and learning styles of pupils based on an initial assessment, validated and supported by using authentic assessment techniques, and the necessary knowledge, techniques, and materials to provide age-appropriate and individual-appropriate instruction. Authentic assessments are defined as teacher observations, anecdotal records, and portfolios of work samples collected over time as pupils are engaged in age-appropriate classroom activities.

(d) To develop and identify model demonstration sites.

(e) To provide for the certification as a trainer of one member of the school personnel at each funded schoolsite.

(f) To conduct an independent evaluation of the program.

SEC. 3. Section 54685.3 of the Education Code is amended to read:

54685.3. The management plan required by Section 54685.2 shall include the following activities:

(a) The dissemination of program information.

(b) The awarding of incentive grants to schools representative of the ethnic, socioeconomic, and geographic diversity of the public school system.

(c) Provisions for training, materials, and technical assistance.

(d) Adaptation of the Early Intervention for School Success Program to meet local school needs, including identification of existing materials and development of new materials, if needed.

(e) Selection of successful sites as demonstration models for additional implementation of the plan.

(f) Certification of one teacher for each funded schoolsite to serve as a local trainer.

(g) Provision for an annual program progress report and program evaluation by the Orange County Superintendent of Schools to be submitted to the State Department of Education.

SEC. 4. Section 54685.9 of the Education Code is amended to read:

54685.9. The techniques that shall be included in the Early Intervention for School Success Program include all of the following:

(a) The use of a collaborative team approach for the initial assessment validated and supported through ongoing authentic assessment techniques of the developmental learning needs of pupils in preschool, kindergarten, and grades 1 and 2, as appropriate.

The collaborative team, when appropriate, shall use the home language of the pupil to assess the pupil's developmental stages. The results of these observations and assessments shall not be used to deny or delay school admissions or to track pupils.

(b) The selection and application of educational materials and instructional strategies that will be appropriate to pupils' developmental stages and individual learning needs. These materials and strategies will be selected with the purpose of providing an active and experiential learning environment.

SEC. 5. Section 54686.2 of the Education Code is amended to read:

54686.2. This article shall become inoperative on July 1, 1999, and as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to continue during the entire 1994–95 school year the Early Intervention for School Success Program, it is necessary that this act take effect immediately.

CHAPTER 320

An act to amend Sections 3031, 3100, and 6323 of the Family Code, relating to family law.

[Approved by Governor August 21, 1994. Filed with Secretary of State August 22, 1994.]

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

SECTION 1. Section 3031 of the Family Code is amended to read:

3031. (a) Where the court considers the issue of custody or visitation the court is encouraged to make a reasonable effort to ascertain whether or not any emergency protective order, protective order, or other restraining order is in effect that concerns the parties or the minor. The court is encouraged not to make a custody or visitation order that is inconsistent with the emergency

protective order, protective order, or other restraining order, unless the court makes both of the following findings:

(1) The custody or visitation order cannot be made consistent with the emergency protective order, protective order, or other restraining order.

(2) The custody or visitation order is in the best interest of the minor.

(b) Whenever custody or visitation is granted to a parent in a case in which domestic violence is alleged and an emergency protective order, protective order, or other restraining order has been issued, the custody or visitation order shall specify the time, day, place, and manner of transfer of the child for custody or visitation to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. Where the court finds a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, the court's order for time, day, place, and manner of transfer of the child for custody or visitation shall be designed to prevent disclosure of the location of the shelter or other confidential location.

(c) When making an order for custody or visitation in a case in which domestic violence is alleged and an emergency protective order, protective order, or other restraining order has been issued, the court shall consider whether the best interest of the child, based upon the circumstances of the case, requires that any custody or visitation arrangement shall be limited to situations in which a third person, specified by the court, is present, or whether custody or visitation shall be suspended or denied.

SEC. 2. Section 3100 of the Family Code is amended to read:

3100. (a) In making an order pursuant to Chapter 4 (commencing with Section 3080), the court shall grant reasonable visitation rights to a parent unless it is shown that the visitation would be detrimental to the best interest of the child. In the discretion of the court, reasonable visitation rights may be granted to any other person having an interest in the welfare of the child.

(b) If a protective order, as defined in Section 6218, has been directed to a parent, the court shall consider whether the best interest of the child requires that any visitation by that parent shall be limited to situations in which a third person, specified by the court, is present, or whether visitation shall be suspended or denied. The court shall include in its deliberations a consideration of the nature of the acts from which the parent was enjoined and the period of time that has elapsed since that order. A parent may submit to the court the name of a person that the parent deems suitable to be present during visitation.

(c) Whenever visitation is ordered in a case in which domestic violence is alleged and an emergency protective order, protective order, or other restraining order has been issued, the visitation order shall specify the time, day, place, and manner of transfer of the child, so as to limit the child's exposure to potential domestic conflict or

violence and to ensure the safety of all family members.

(d) Where the court finds a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, the court's order for time, day, place, and manner of transfer of the child for visitation shall be designed to prevent disclosure of the location of the shelter or other confidential location.

SEC. 3. Section 6323 of the Family Code is amended to read:

6323. (a) Subject to Section 3064:

(1) The court may issue an ex parte order determining the temporary custody of a minor child on the conditions the court determines.

(2) The court may issue an ex parte order determining the right of a party to visit a minor child on the conditions the court determines in a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, in an action under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12), or in a proceeding commenced under this division in the case of a marital relationship between the parties.

(b) When making any order for custody or visitation pursuant to this section, the court's order shall specify the time, day, place, and manner of transfer of the child for custody or visitation to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. Where the court finds a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, the court's order for time, day, place, and manner of transfer of the child for custody or visitation shall be designed to prevent disclosure of the location of the shelter or other confidential location.

(c) When making an order for custody or visitation pursuant to this section, the court shall consider whether the best interest of the child, based upon the circumstances of the case, requires that any visitation or custody arrangement shall be limited to situations in which a third person, specified by the court, is present, or whether visitation or custody shall be suspended or denied.

CHAPTER 321

An act to amend Section 18973.5 of, and to repeal and add Section 18978 of, the Government Code, relating to civil service, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 21, 1994. Filed with Secretary of State August 22, 1994.]

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

SECTION 1. Section 18973.5 of the Government Code is amended to read:

18973.5. For purposes of Section 18973, an entrance examination is any open competitive examination other than one for a class having a requirement of both college graduation and two or more years of experience.

SEC. 2. Section 18978 of the Government Code is repealed.

SEC. 3. Section 18978 is added to the Government Code, to read:

18978. (a) For any entrance examination held on an open, nonpromotional basis under Section 18950, a veteran shall be allowed the following additional credits:

(1) Disabled veterans, 10 points.

(2) Other veterans, five points.

(b) For purposes of this section, the following definitions apply:

(1) "Veteran" means any person who has served full time for one year or more in the armed services that included at least 30 days in time of war or 30 days in time of peace during which the veteran served in a campaign or expedition for service in which a medal has been authorized by the government of the United States.

(2) "Disabled veteran" has the same meaning as that term is used in Section 18973.

(c) Individuals who received veterans points under this section are not eligible for career credits pursuant to Sections 18950.1, 18951, and 18951.5.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the changes made by this act to examinations for vacancies in civil service positions can take effect at the earliest possible time, it is necessary that this bill take effect immediately.

CHAPTER 322

An act to amend Sections 51600, 51605, 51607, 51608, 51611, 51615, and 51618 of, and to repeal Sections 51609 and 51610 of, the Water Code, relating to water, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 21, 1994. Filed with Secretary of State August 22, 1994.]

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

SECTION 1. Section 51600 of the Water Code is amended to read:

51600. (a) After any installment of an unpaid assessment on which bonds have not been issued has become delinquent, the county treasurer may, only upon the request of the district, publish once a week for two weeks in a newspaper of general circulation

published in each county where delinquency exists a notice containing a list of all delinquencies in the county. At the same time as the publication, the county treasurer shall mail the notice to the last known address of the property owner, as shown on the latest county tax roll.

(b) No property may be sold pursuant to this article in the absence of publication and notice to the owner pursuant to subdivision (a).

SEC. 2. Section 51605 of the Water Code is amended to read:

51605. At the time of the sale, the county treasurer shall sell the parcel to himself or herself and his or her successors in office, as trustee for the district, for the amount due on the installment, accrued interest, penalty, and costs.

SEC. 3. Section 51607 of the Water Code is amended to read:

51607. The owner of any parcel offered for sale to pay a delinquent assessment or installment thereof may designate in writing to the county treasurer prior to the sale the portion he or she wishes first sold if less than the whole.

SEC. 4. Section 51608 of the Water Code is amended to read:

51608. If the owner fails to designate the portion of the parcel he or she wishes sold for a delinquent assessment, the county treasurer may sell the whole or the least portion of the land that will bring the amount due for the assessment, accrued interest, penalty and costs.

SEC. 5. Section 51609 of the Water Code is repealed.

SEC. 6. Section 51610 of the Water Code is repealed.

SEC. 7. Section 51611 of the Water Code is amended to read:

51611. A certificate of sale shall be executed by the county treasurer to the county treasurer, as trustee for the district, and the certificate of sale shall be recorded in the office of the county recorder in the county where the parcel described in the certificate is situated. The district shall reimburse the county treasurer for any costs incurred pursuant to this section.

SEC. 8. Section 51615 of the Water Code is amended to read:

51615. If no redemption is made within one year, the district is entitled to a deed executed by the county treasurer. The district shall reimburse the county treasurer for any costs incurred pursuant to this section.

SEC. 9. Section 51618 of the Water Code is amended to read:

51618. If, prior to the redemption, the parcel has been sold at a delinquency sale, the money paid by the county treasurer at the sale shall be refunded to him or her upon redemption of the parcel.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to remove third party purchasers from reclamation district delinquency sales, and limit those sales to the county treasurer as trustee for the district as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 323

An act to add Section 10006 to the Penal Code, relating to inmates.

[Approved by Governor August 21, 1994. Filed with Secretary of State August 22, 1994.]

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

SECTION 1. Section 10006 is added to the Penal Code, to read:

10006. (a) The Department of the Youth Authority and local juvenile halls and camps are prohibited from allowing a minor detained in any institution or facility under their respective jurisdiction to view a videotape or movie shown by the institution or facility that contains harmful matter, as specified in Chapter 7.6 (commencing with Section 313) of Title 9 of Part 1.

(b) The Department of Corrections, the Department of the Youth Authority, county juvenile halls and camps, and local adult detention facilities may promulgate regulations regarding the showing of videotapes and movies at any institution or facility under their respective jurisdiction in order to provide for the reasonable security of the institution or facility in which a minor or adult is confined and for the reasonable protection of the public consistent with Section 2600.

CHAPTER 324

An act to amend Section 366.26 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor August 21, 1994. Filed with Secretary of State August 22, 1994.]

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

SECTION 1. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. For minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently

terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all minors who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these minors, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, and then shall do one of the following:

(1) Permanently sever the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) The court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the minor will be adopted. If the court so determines, the findings pursuant to subdivision (b) or paragraph 1 of subdivision (e) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or pursuant to Section 366.21 or 366.22 that a minor cannot or should not be returned to his or her parent or guardian, shall then constitute a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the minor due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) A minor 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the

parents cannot resume custody when residential care is no longer needed.

(D) The minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances, which do not include an unwillingness to accept legal responsibility for the minor, but who is willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the minor.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to paragraph (1) and that the minor has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days. During this 90-day period, the public agency responsible for seeking adoptive parents, for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 90-day period, the public agency shall conduct the search for adoptive parents pursuant to Section 8708 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a minor may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the minor because of the minor's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the minor is the age of seven years or more.

(4) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the minor shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to

the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the minor in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a minor who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanency plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and

examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a minor who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of such a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require this protection, the court shall appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel. The minor shall not be present in court unless the minor so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the minor free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the minor referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the minor and shall be entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the minor, who shall serve until the minor is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(*l*) An order by the court directing that a hearing pursuant to this section be held is not an appealable order, but may be the subject of review by extraordinary writ.

SEC. 2. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. For minors who are adjudged dependent children of the juvenile court pursuant to

subdivision (c) of Section 360 on or after January 1, 1989, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all minors who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these minors, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, and then shall do one of the following:

(1) Permanently sever the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) The court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the minor will be adopted. If the court so determines, the findings pursuant to subdivision (b) or paragraph 1 of subdivision (e) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or pursuant to Section 366.21 or 366.22 that a minor cannot or should not be returned to his or her parent or guardian, shall then constitute a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the minor due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) A minor 12 years of age or older objects to termination of

parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances, which do not include an unwillingness to accept legal responsibility for the minor, but who is willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the minor.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to paragraph (1) and that the minor has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days. During this 90-day period, the public agency responsible for seeking adoptive parents, for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 90-day period, the public agency shall conduct the search for adoptive parents pursuant to Section 8708 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a minor may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the minor because of the minor's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the minor is the age of seven years or more.

(4) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and

permanent environment, but not willing to become a legal guardian, the minor shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the minor in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a minor who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanency plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The assessment prepared pursuant to

subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a minor who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of such a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require this protection, the court shall appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel. The minor shall not be present in court unless the minor so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or

parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the minor free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the minor referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the minor and shall be entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the minor, who shall serve until the minor is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(*l*) An order by the court directing that a hearing pursuant to this section be held is not at any time an appealable order, but may be the subject of review exclusively by extraordinary writ filed within 60 days of the making of the order. If the petition for extraordinary writ is timely filed and supported by an adequate record, the court of appeal after first providing the other parties with an opportunity to respond shall consider and decide the matter on the merits.

SEC. 3. Section 2 of this bill incorporates amendments to Section

366.26 of the Welfare and Institutions Code proposed by both this bill and SB 1531. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 366.26 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1531, in which case Section 1 of this bill shall not become operative.

CHAPTER 325

An act to amend Section 35183 of the Education Code, relating to schools.

[Approved by Governor August 23, 1994. Filed with Secretary of State August 23, 1994.]

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

SECTION 1. Section 35183 of the Education Code is amended to read:

35183. (a) The Legislature finds and declares each of the following:

(1) The children of this state have the right to an effective public school education. Both students and staff of the primary, elementary, junior and senior high school campuses have the constitutional right to be safe and secure in their persons at school. However, children in many of our public schools are forced to focus on the threat of violence and the messages of violence contained in many aspects of our society, particularly reflected in gang regalia that disrupts the learning environment.

(2) "Gang-related apparel" is hazardous to the health and safety of the school environment.

(3) Instructing teachers and administrators on the subtleties of identifying constantly changing gang regalia and gang affiliation takes an increasing amount of time away from educating our children.

(4) Weapons, including firearms and knives, have become common place upon even our elementary school campuses. Students often conceal weapons by wearing clothing, such as jumpsuits and overcoats, and by carrying large bags.

(5) The adoption of a schoolwide uniform policy is a reasonable way to provide some protection for students. A required uniform may protect students from being associated with any particular gang. Moreover, by requiring schoolwide uniforms teachers and administrators may not need to occupy as much of their time learning the subtleties of gang regalia.

(6) To control the environment in public schools to facilitate and maintain an effective learning environment and to keep the focus of the classroom on learning and not personal safety, schools need the

authorization to implement uniform clothing requirements for our public school children.

(7) Many educators believe that school dress significantly influences pupil behavior. This influence is evident on school dressup days and color days. Schools that have adopted school uniforms experience a "coming together feeling," greater school pride, and better behavior in and out of the classroom.

(b) The governing board of any school district may adopt or rescind a reasonable dress code policy that requires pupils to wear a schoolwide uniform or prohibits pupils from wearing "gang-related apparel" if the governing board of the school district approves a plan that may be initiated by an individual school's principal, staff, and parents and determines that the policy is necessary for the health and safety of the school environment. Individual schools may include the reasonable dress code policy as part of its school safety plan, pursuant to Section 35294.1.

(c) Adoption and enforcement of a reasonable dress code policy pursuant to subdivision (b) is not a violation of Section 48950. For purposes of this section, Section 48950 shall apply to elementary, high school, and unified school districts. If a schoolwide uniform is required, the specific uniform selected shall be determined by the principal, staff, and parents of the individual school.

(d) A dress code policy that requires pupils to wear a schoolwide uniform shall not be implemented with less than six months' notice to parents and the availability of resources to assist economically disadvantaged pupils.

(e) The governing board shall provide a method whereby parents may choose not to have their children comply with an adopted school uniform policy.

(f) If a governing board chooses to adopt a policy pursuant to this section, the policy shall include a provision that no pupil shall be penalized academically or otherwise discriminated against nor denied attendance to school if the pupil's parents chose not to have the pupil comply with the school uniform policy. The governing board shall continue to have responsibility for the appropriate education of those pupils.

(g) A policy adopted pursuant to this section shall not preclude pupils that participate in a nationally recognized youth organization from wearing organization uniforms on days that the organization has a scheduled meeting.

CHAPTER 326

An act to add Section 33320.7 to, and to add Article 3 (commencing with Section 33515) to Chapter 5 of Part 1 of Division 24 of, the Health and Safety Code, relating to redevelopment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 27, 1994.]

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

SECTION 1. Section 33320.7 is added to the Health and Safety Code, to read:

33320.7. (a) Notwithstanding Section 21090 of the Public Resources Code, the Inland Valley Development Agency may determine at a noticed public hearing that the amendment of a redevelopment plan for the Norton Air Force Base Redevelopment Project Area pursuant to this chapter is not subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), except that projects implementing the redevelopment plan, including specific plans, rezonings, and ministerial projects that may have a significant effect on the environment, shall be subject to the California Environmental Quality Act. The environmental document for any implementing project shall include an analysis and mitigation of potential cumulative impacts that otherwise will not be known until an environmental impact report for the redevelopment plan is certified.

(b) The notice of the public hearing required pursuant to subdivision (a) shall include the date, time, and place of the hearing, a brief description of the proposed project and its location, the date when notice will be provided pursuant to Section 21092 of the Public Resources Code, and the address where copies of the notice of exemption are available for review.

(c) The notice required by this section shall be given to all organizations and individuals who have previously requested notice pursuant to the California Environmental Quality Act, and shall be given by publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project.

(d) If the Inland Valley Development Agency determines, pursuant to subdivision (a), that the amendment of a redevelopment plan is not subject to the California Environmental Quality Act, the redevelopment agency shall prepare and certify an environmental impact report for the redevelopment plan amendment within 12 months after effective date of the ordinance amending the redevelopment plan.

(e) An environmental impact report prepared and certified for a

specific plan or other comprehensive land use plan for the applicable portion of the Inland Valley Redevelopment Project Area shall satisfy the requirement of subdivision (d) if the plan covers the same area and project as the amendment to the redevelopment plan and is certified within 12 months after the effective date of the ordinance amending the redevelopment plan.

(f) The redevelopment agency shall revise the redevelopment plan if necessary to mitigate any impacts and comply with the California Environmental Quality Act and adopt mitigation measures as conditions of project approval.

(g) This section shall only apply to a redevelopment plan amendment approved on or before September 1, 1995.

SEC. 2. Article 3 (commencing with Section 33515) is added to Chapter 5 of Part 1 of Division 24 of the Health and Safety Code, to read:

Article 3. Actions Involving Public Agencies

33515. (a) A redevelopment agency shall not, either directly or indirectly, use its funds to file or maintain an action or proceeding in either of the following circumstances:

(1) Against a public agency that does not have jurisdiction to conduct its governmental activities within the jurisdiction of the redevelopment agency.

(2) The subject matter of the action involves real property outside the jurisdictional boundaries of the redevelopment agency.

(b) The prohibition in subdivision (a) shall not preclude a redevelopment agency from using its funds to:

(1) Defend itself against any action.

(2) File or maintain an action against a public agency or private entity regarding the interpretation or enforcement of a written agreement between the redevelopment agency and that public agency or private entity.

(c) No funds of a redevelopment agency shall be loaned or granted to any person, corporation, or public agency to finance, in whole or in part, an action the financing of which by a redevelopment agency is prohibited by subdivision (a). In addition, a redevelopment agency shall not borrow funds from its community or any other source to file or maintain an action which is prohibited by subdivision (a).

(d) Nothing in this section shall prohibit a community from filing or maintaining an action on behalf of the community and its redevelopment agency as long as funds of the redevelopment agency are not used, either directly or indirectly, on behalf of the lawsuit.

(e) For purposes of this article:

(1) "Finance" includes, but is not necessarily limited to, the payment of filing fees, attorneys' fees, service fees, expert witness fees, consultants' fees, or any other expenses or costs incurred in connection with an action.

(2) "Public agency" includes a local agency as defined in Section 54951 of the Government Code and includes a joint powers agency or authority and a redevelopment agency.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the Community Redevelopment Law be amended to authorize local agencies to adapt their redevelopment projects to address the changing needs of their communities, it is necessary that this act go into immediate effect.

CHAPTER 327

An act to amend Section 1141.19.5 of the Code of Civil Procedure, relating to arbitration.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 1141.19.5 of the Code of Civil Procedure is amended to read:

1141.19.5. In any arbitration proceeding under this chapter, no party may require the production of evidence specified in subdivision (a) of Section 3295 of the Civil Code at the arbitration, unless the court enters an order permitting pretrial discovery of that evidence pursuant to subdivision (c) of Section 3295 of the Civil Code.

CHAPTER 328

An act to amend Section 26020 of the Public Resources Code, relating to energy resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 26020 of the Public Resources Code is amended to read:

26020. The authority may incur indebtedness and issue and renew negotiable bonds, notes, debentures, or other securities of any kind or class. All indebtedness, however evidenced, shall be payable

solely from revenues of the authority and the proceeds of its negotiable bonds, notes, debentures, or other securities and shall not exceed the sum of three hundred fifty million dollars ($350,000,000) of total debt. As used in this section, "total debt" does not include indebtedness which is incurred to refund existing debts, except to the extent that the indebtedness exceeds the amount of those debts.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to meet the growing demand for revenue bond financing for alternative energy projects that are necessary to meet consumer energy needs, promote business development, and improve air quality and public health in this state, it is necessary that this act take effect immediately.

CHAPTER 329

An act to amend Section 4080 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 4080 of the Welfare and Institutions Code is amended to read:

4080. (a) Psychiatric health facilities, as defined in Section 1250.2 of the Health and Safety Code, shall only be licensed by the State Department of Mental Health subsequent to application by counties, county contract providers, or other organizations pursuant to this part.

(b) (1) For counties or county contract providers that choose to apply, the local mental health director shall first present to the local mental health advisory board for its review an explanation of the need for the facility and a description of the services to be provided. The local mental health director shall then submit to the governing body the explanation and description. The governing body, upon its approval, may submit the application to the State Department of Mental Health.

(2) Other organizations that will be applying for licensure and do not intend to use any Bronzan-McCorquodale funds pursuant to Section 5707 shall submit to the local mental health director and the governing body in the county in which the facility is to be located a written and dated proposal of the services to be provided. The local mental health director and governing body shall have 30 days during which to provide any advice and recommendations regarding

licensure, as they deem appropriate. At any time after the 30-day period, the organizations may then submit their applications, along with the mental health director's and governing body's advice and recommendations, if any, to the State Department of Mental Health.

(c) The State Fire Marshal and other appropriate state agencies, to the extent required by law, shall cooperate fully with the State Department of Mental Health to ensure that the State Department of Mental Health approves or disapproves the licensure applications not later than 90 days after the application submission by a county, county contract provider, or other organization.

(d) Every psychiatric health facility and program for which a license has been issued shall be periodically inspected by a multidisciplinary team appointed or designated by the State Department of Mental Health. The inspection shall be conducted no less than once every two years and as often as necessary to ensure the quality of care provided. During the inspections the review team shall offer such advice and assistance to the psychiatric health facility as it deems appropriate.

(e) (1) The program aspects of a psychiatric health facility that shall be reviewed and may be approved by the State Department of Mental Health shall include, but not be limited to:

(A) Activities programs.
(B) Administrative policies and procedures.
(C) Admissions, including provisions for a mental evaluation.
(D) Discharge planning.
(E) Health records content.
(F) Health records services.
(G) Interdisciplinary treatment teams.
(H) Nursing services.
(I) Patient rights.
(J) Pharmaceutical services.
(K) Program space requirements.
(L) Psychiatrist and clinical psychological services.
(M) Rehabilitation services.
(N) Restraint and seclusion.
(O) Social work services.
(P) Space, supplies, and equipment.
(Q) Staffing standards.
(R) Unusual occurrences.
(S) Use of outside resources, including agreements with general acute care hospitals.
(T) Linguistic access and cultural competence.
(U) Structured outpatient services to be provided under special permit.

(2) The State Department of Mental Health has the sole authority to grant program flexibility.

(f) The State Department of Mental Health shall adopt regulations that shall include, but not be limited to, all of the following:

(1) Procedures by which the State Department of Mental Health shall review and may approve the program and facility requesting licensure as a psychiatric health facility as being in compliance with program standards established by the department.

(2) Procedures by which the Director of Mental Health shall approve, or deny approval of, the program and facility licensed as a psychiatric health facility pursuant to this section.

(3) Provisions for site visits by the State Department of Mental Health for the purpose of reviewing a facility's compliance with program and facility standards.

(4) Provisions for the State Department of Mental Health for any administrative proceeding regarding denial, suspension, or revocation of a psychiatric health facility license.

(g) Regulations shall be adopted by the State Department of Mental Health, which shall establish standards for pharmaceutical services in psychiatric health facilities. Licensed psychiatric health facilities shall be exempt from requirements to obtain a separate pharmacy license or permit.

(h) (1) It is the intent of the Legislature that the State Department of Mental Health shall license the facility in order to establish innovative and more competitive acute care services as alternatives to hospital care.

(2) The State Department of Mental Health shall review and may approve the program aspects of public or private facilities, with the exception of those facilities that are federally certified or accredited by a nationally recognized commission that accredits health care facilities, only if the average per diem charges or costs of service provided in the facility is approximately 60 percent of the average per diem charges or costs of similar psychiatric services provided in a general hospital.

(3) (A) When a private facility is accredited by a nationally recognized commission that accredits health care facilities, the department shall review and may approve the program aspects only if the average per diem charges or costs of service provided in the facility do not exceed approximately 75 percent of the average per diem charges or costs of similar psychiatric service provided in a psychiatric or general hospital.

(B) When a private facility serves county patients, the department shall review and may approve the program aspects only if the facility is federally certified by the Health Care Financing Administration and serves a population mix that includes a proportion of Medi-Cal patients sufficient to project an overall cost savings to the county, and the average per diem charges or costs of service provided in the facility do not exceed approximately 75 percent of the average per diem charges or costs of similar psychiatric service provided in a psychiatric or general hospital.

(4) When a public facility is federally certified by the Health Care Financing Administration and serves a population mix that includes a proportion of Medi-Cal patients sufficient to project an overall

program cost savings with certification, the department shall approve the program aspects only if the average per diem charges or costs of service provided in the facility do not exceed approximately 75 percent of the average per diem charges or costs of similar psychiatric service provided in a psychiatric or general hospital.

(5) (A) The State Department of Mental Health may set a lower rate for private or public facilities than that required by paragraph (3) or paragraph (4), respectively if so required by the federal Health Care Financing Administration as a condition for the receipt of federal matching funds.

(B) This section does not impose any obligation on any private facility to contract with a county for the provision of services to Medi-Cal beneficiaries, and any contract for that purpose is subject to the agreement of the participating facility.

(6) (A) In using the guidelines specified in this subdivision, the department shall take into account local conditions affecting the costs or charges.

(B) In those psychiatric health facilities authorized by special permit to offer structured outpatient services not exceeding 10 daytime hours, the following limits on per diem rates shall apply:

(i) The per diem charge for patients in both a morning and an afternoon program on the same day shall not exceed 60 percent of the facility's authorized per diem charge for inpatient services.

(ii) The per diem charge for patients in either a morning or afternoon program shall not exceed 30 percent of the facility's authorized per diem charge for inpatient services.

(i) The licensing fees charged for these facilities shall be credited to the State Department of Mental Health for its costs incurred in the review of psychiatric health facility programs, in connection with the licensing of these facilities.

(j) Proposed changes in the standards or regulations affecting health facilities that serve the mentally disordered shall be effected only with the review and coordination of the Health and Welfare Agency.

(k) In psychiatric health facilities where the clinical director is not a physician, a psychiatrist, or if one is temporarily not available, a physician shall be designated who shall direct those medical treatments and services that can only be provided by, or under the direction of, a physician.

CHAPTER 330

An act to add Sections 42801.5 and 72507 to the Education Code, and to add Article 1.7 (commencing with Section 53226) to Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code, relating to local government.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 42801.5 is added to the Education Code, to read:

42801.5. Notwithstanding the requirement to provide for indemnity bonds pursuant to Sections 42650 and 42801, the governing board of a school district may, in lieu thereof, insure against losses caused by an employee or an officer of a school district if the insurance gives the same or greater protection to the school district that a bond would provide in indemnifying the school district against any loss caused by the employee or officer of the district.

SEC. 2. Section 72507 is added to the Education Code, to read:

72507. Notwithstanding the requirement to provide for indemnity bonds pursuant to Section 85266.5, the governing board of a community college district may, in lieu thereof, insure against all losses caused by an employee or an officer of a community college district if the insurance gives the same or greater protection to the community college district that a bond would provide in indemnifying the community college districts against any loss caused by the employee or officer of the community college district.

SEC. 3. Article 1.7 (commencing with Section 53226) is added to Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 1.7. Local District Bonds

53226. This article shall apply to districts other than school districts.

53226.1. The legislative body of any district electing to adopt by resolution the procedures in this chapter shall, prior to an election of officers of the districts, prescribe the amounts of officials' bonds of the officers of the district.

53226.2. As an alternative or supplementary to the bonds required by this article, the legislative body may establish a master bond pursuant to Section 1481.

CHAPTER 331

An act to repeal Section 130554 of the Public Utilities Code, relating to transportation.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 130554 of the Public Utilities Code is repealed.

CHAPTER 332

An act to amend Section 998 of the Code of Civil Procedure, relating to civil actions.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 998 of the Code of Civil Procedure is amended to read:

998. (a) The costs allowed under Sections 1031 and 1032 shall be withheld or augmented as provided in this section.

(b) Not less than 10 days prior to commencement of trial, any party may serve an offer in writing upon any other party to the action to allow judgment to be taken in accordance with the terms and conditions stated at that time.

(1) If the offer is accepted, the offer with proof of acceptance shall be filed and the clerk or the judge shall enter judgment accordingly.

(2) If the offer is not accepted prior to trial or within 30 days after it is made, whichever occurs first, it shall be deemed withdrawn, and cannot be given in evidence upon the trial.

(3) For purposes of this subdivision, a trial shall be deemed to be actually commenced at the beginning of the opening statement of the plaintiff or counsel, and if there is no opening statement, then at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence.

(c) If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment, the plaintiff shall not recover his or her costs and shall pay the defendant's costs from the time of the offer. For purposes of this section, a plaintiff in a cause of action not based on tort shall not be deemed to have obtained a more favorable judgment unless the judgment obtained by the plaintiff, exclusive of attorney's fees and costs, exceeds the offer

made by the defendant pursuant to this section. In addition, in any action or proceeding other than an eminent domain action, the court, in its discretion, may require the plaintiff to pay the defendant's costs from the date of filing of the complaint and a reasonable sum to cover costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, the preparation or trial of the case by the defendant.

(d) If an offer made by a plaintiff is not accepted and the defendant fails to obtain a more favorable judgment, the court in its discretion may require the defendant to pay a reasonable sum to cover costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, the preparation or trial of the case by the plaintiff, in addition to plaintiff's costs.

(e) If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment, the costs under this section shall be deducted from any damages awarded in favor of the plaintiff. If the costs awarded under this section exceed the amount of the damages awarded to the plaintiff the net amount shall be awarded to the defendant and judgment shall be entered accordingly.

(f) Police officers shall be deemed to be expert witnesses for the purposes of this section; plaintiff includes a cross-complainant and defendant includes a cross-defendant. Any judgment entered pursuant to this section shall be deemed to be a compromise settlement.

(g) This chapter does not apply to an offer which is made by a plaintiff in an eminent domain action.

(h) The costs for services of expert witnesses for trial under subdivisions (c) and (d) shall not exceed those specified in Section 68092.5 of the Government Code.

CHAPTER 333

An act to amend Section 56728.9 of the Education Code, relating to special education.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 56728.9 of the Education Code is amended to read:

56728.9. (a) Notwithstanding any other provision of this article, any special education local plan area that is a single district and that is severely impacted by pupils who reside in licensed children's

institutions, as defined in Section 56155.5, shall be entitled to a support services amount calculated pursuant to Section 56734, except that the quotient computed pursuant to Section 56733 shall be multiplied by 150 percent for classes in which a majority of the pupils enrolled reside in licensed children's institutions, if the special education local plan area meets all of the requirements of this section.

(b) A special education local plan area is severely impacted, for purposes of this section, if all of the following requirements are satisfied:

(1) Pupils who reside in licensed children's institutions represent more than 15 percent of the special education enrollment of the special education local plan area.

(2) Special education enrollment of pupils who reside in licensed children's institutions has increased by more than 50 percent since 1985.

(3) The special education local plan area does not enroll more than 10 percent of its pupils who do not reside in licensed children's institutions in special education programs.

(c) Any special education local plan area that is severely impacted pursuant to subdivision (b) may make the calculation adjustments provided by subdivision (a) only for those classes in which a majority of the pupils enrolled during the 1989–90 school year resided in licensed children's institutions.

(d) The calculation provided by this section is a base year calculation, based on the enrollment in classes in the 1989–90 school year, creating a limit on funding adjustments provided by this section. Special education local plan areas shall not be required to maintain the 1989–90 level of eligible classes in order to be eligible for the calculation in future years. Special education local plan areas are encouraged to place pupils who reside in licensed children's institutions in the educational environment that best meets the pupil's needs in keeping with the least restrictive environment requirements of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and the Master Plan for Special Education.

(e) A special education local plan area may claim an amount of funding in a fiscal year that is not greater than the amount claimed pursuant to this section in the prior fiscal year. The amount claimed may be increased only if a specific appropriation is made for that purpose in that fiscal year. A special education local plan area that received funding for purposes of this section in the 1994–95 fiscal year shall continue to receive that funding in a subsequent fiscal year only if it continues to meet the qualifications of this section and an appropriation is made for those purposes in the annual Budget Act. A special education local plan area that did not receive funding for purposes of this section in the 1994–95 fiscal year that subsequently qualifies for that funding, shall not receive that funding unless an additional appropriation is made for those purposes in the annual Budget Act.

(f) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless Assembly Bill 3757 or Senate Bill 1640 of the 1993–94 Regular Session is enacted and becomes operative on or before January 1, 1996, in which case this section shall remain in effect only until January 1, 1996, and as of that date is repealed.

CHAPTER 334

An act to amend Section 699.5 of the Insurance Code, relating to insurance.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 699.5 of the Insurance Code is amended to read:

699.5. (a) The ownership or financial control, in part, direct or indirect, of any domestic, foreign, or alien insurer, by any state of the United States or by a foreign government or by any political subdivision of either, or by an agency of any other state, government, or subdivision thereof, shall not, provided the insurer complies with all other requirements for issuance, renewal, or continuation of a license, restrict the commissioner from issuing, renewing, or continuing in effect the license of that insurer to transact in this state the kinds of insurance business for which that insurer is otherwise qualified under the provisions of this chapter and under its charter unless the commissioner shall find that (1) the insurer is subject to any form of subsidy that would enable it to compete unfairly with domestic insurers, (2) the insurer is subject to governmental practices that discriminate on the basis of race, color, creed, or national origin, (3) the ownership or financial control will create the presence of any sovereign immunity in the insurer, (4) appropriate measures and controls do not exist to avoid security problems resulting from an insurer's access to confidential information and data of its insured, or (5) the ownership or financial control results in substantial or undue influence being asserted over the insurer.

(b) The failure by any applicant for a license to submit the information requested by the commissioner for the purposes of determining whether to make a finding pursuant to subdivision (a) shall be sufficient to deny the application.

(c) Nothing in the amendments to this section enacted during the 1994 portion of the 1993–94 Regular Session of the Legislature shall be interpreted to authorize the issuance of a license to an insurer wholly owned by any governmental entity described in subdivision (a).

CHAPTER 335

An act to add Sections 40455 and 40456 to the Health and Safety Code, relating to air pollution.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 40455 is added to the Health and Safety Code, to read:

40455. Notwithstanding subdivision (e) of Section 40717, the south coast district shall not require any local agency to implement any transportation control measure that the district itself is prohibited from enacting pursuant to Section 40454, unless required by the federal Clean Air Act.

SEC. 2. Section 40456 is added to the Health and Safety Code, to read:

40456. Except as provided in Section 43845, the south coast district shall not require any employer to charge its employees for parking.

CHAPTER 336

An act to repeal and add Section 19503 to the Welfare and Institutions Code, relating to rehabilitation.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 19503 of the Welfare and Institutions Code is repealed.

SEC. 2. Section 19503 is added to the Welfare and Institutions Code, to read:

19503. The Director of Rehabilitation shall appoint an administrator for each orientation center for the blind who shall administer and supervise the program at the center in accordance with this article and under the supervision of the Director of Rehabilitation. The administrator of each orientation center for the blind shall be either a sighted or visually handicapped person and shall have all of the following minimum qualifications:

(a) Four years of full time, paid experience working in a program for the education or rehabilitation of adults who are legally blind, with emphasis on nonvisual living techniques, including, but not limited to, daily living, mobility, and communication skills. At least

two years' experience shall have been in a supervisory or administrative capacity.

(b) Proficiency in Braille as a second language.

(c) Education equivalent to graduation from college with a bachelor's degree. Additional qualifying experience may be substituted on a year-for-year basis.

CHAPTER 337

An act to repeal Section 1568.22 of the Health and Safety Code, relating to day care.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 1568.22 of the Health and Safety Code is repealed.

CHAPTER 338

An act to add Chapter 3.5 (commencing with Section 9250) to Part 1 of Division 8.5 of the Welfare and Institutions Code, relating to elderly persons.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Chapter 3.5 (commencing with Section 9250) is added to Part 1 of Division 8.5 of the Welfare and Institutions Code, to read:

CHAPTER 3.5. CALIFORNIA SENIOR LEGISLATURE

9250. (a) The Legislature finds and declares that the needs of senior citizens for public programs in health, social services, recreation, transportation, education, housing, cultural services, and other appropriate areas of service can best be assessed by senior citizens.

(b) The Legislature also finds and declares that the California Senior Legislature, having been in continuous service since the first session in 1980 has proved its usefulness in providing model legislation for older citizens and advocating for the needs of seniors, shall be established through this chapter and shall operate according

to the procedures set forth in this chapter.

9251. (a) The California Senior Legislature shall be composed of two houses, the California Senior Senate, composed of 40 members, and the California Senior Assembly, composed of 80 members.

(b) Members of the California Senior Legislature shall serve two-year terms.

9252. The members of the California Senior Legislature shall be elected, in all 33 planning and service areas in California, according to rules developed by the California Senior Legislature in cooperation with the California Association of Area Agencies on Aging and the California Commission on Aging.

9253. The California Commission on Aging shall render such services as are necessary to implement this chapter pursuant to an agreement entered into with the California Senior Legislature.

9254. The California Senior Legislature shall have the full authority to define its program and utilize its funds in any way necessary to carry out the duties of this chapter, provided that no such program or activity is in violation of state law or regulation.

9255. The funds for the California Senior Legislature and the supportive activities of the Commission on Aging for the California Senior Legislature shall be entirely allocated from the California Fund for Senior Citizens.

It is the intent of the Legislature that the General Fund shall not be liable for any of the costs of the California Senior Legislature.

CHAPTER 339

An act to amend Sections 2079 and 2079.3 of the Civil Code, relating to real property.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 2079 of the Civil Code is amended to read:

2079. (a) It is the duty of a real estate broker or salesperson, licensed under Division 4 (commencing with Section 10000) of the Business and Professions Code, to a prospective purchaser of residential real property comprising one to four dwelling units, including a manufactured home as defined in Section 18007 of the Health and Safety Code, to conduct a reasonably competent and diligent visual inspection of the property offered for sale and to disclose to that prospective purchaser all facts materially affecting the value or desirability of the property that such an investigation would reveal, if that broker has a written contract with the seller to find or obtain a buyer or is a broker who acts in cooperation with that broker to find and obtain a buyer.

(b) It is the duty of a real estate broker or salesperson licensed under Division 4 (commencing with Section 10000) of the Business and Professions Code to comply with this section and any regulations imposing standards of professional conduct adopted pursuant to Section 10080 of the Business and Professions Code with reference to Sections 10176 and 10177 of the Business and Professions Code.

SEC. 2. Section 2079.3 of the Civil Code is amended to read:

2079.3. The inspection to be performed pursuant to this article does not include or involve an inspection of areas that are reasonably and normally inaccessible to such an inspection, nor an affirmative inspection of areas off the site of the subject property or public records or permits concerning the title or use of the property, and, if the property comprises a unit in a planned development as defined in Section 11003 of the Business and Professions Code, a condominium as defined in Section 783, or a stock cooperative as defined in Section 11003.2 of the Business and Professions Code, does not include an inspection of more than the unit offered for sale, if the seller or the broker complies with the provisions of Section 1368.

SEC. 3. This act is intended to clarify the obligations of real estate licensees and is not intended to change any existing duty of a broker or salesperson to disclose material facts within the knowledge of the licensee, including the existence of nuisances or other conditions of nearby properties that may affect the value or desirability of the property offered for sale.

CHAPTER 340

An act to amend Sections 798.23, 798.49, and 798.53 of the Civil Code, relating to mobilehomes.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 798.23 of the Civil Code is amended to read:

798.23. (a) The owner of the park, and any person employed by the park, shall be subject to, and comply with, all park rules and regulations, to the same extent as residents and their guests.

(b) This section shall not apply to either of the following:

(1) Any rule or regulation that governs the age of any resident or guest.

(2) Acts of a park owner or park employee which are undertaken to fulfill a park owner's maintenance, management, and business operation responsibilities.

(c) This section shall not affect in any way, either to validate or invalidate, nor does this section express a legislative policy judgment in favor of or against, the enforcement of a park rule or regulation

which prohibits or restricts the subletting of a mobilehome park space by a tenant.

SEC. 2. Section 798.49 of the Civil Code is amended to read:

798.49. (a) Except as provided in subdivision (d), the local agency of any city, including a charter city, county, or city and county, which administers an ordinance, rule, regulation, or initiative measure that establishes a maximum amount that management may charge a tenant for rent shall permit the management to separately charge a homeowner for any of the following:

(1) The amount of any fee, assessment or other charge first imposed by a city, including a charter city, a county, a city and county, the state, or the federal government on or after January 1, 1995, upon the space rented by the homeowner.

(2) The amount of any increase on or after January 1, 1995, in an existing fee, assessment or other charge imposed by any governmental entity upon the space rented by the homeowner.

(3) The amount of any fee, assessment or other charge upon the space first imposed or increased on or after January 1, 1993, pursuant to any state or locally mandated program relating to housing contained in the Health and Safety Code.

(b) If management has charged the homeowner for a fee, assessment, or other charge specified in subdivision (a) that was increased or first imposed on or after January 1, 1993, and the fee, assessment, or other charge is decreased or eliminated thereafter, the charge to the homeowner shall be decreased or eliminated accordingly.

(c) The amount of the fee, assessment or other charges authorized by subdivision (a) shall be separately stated on any billing to the homeowner. Any change in the amount of the fee, assessment, or other charges that are separately billed pursuant to subdivision (a) shall be considered when determining any rental adjustment under the local ordinance.

(d) This section shall not apply to any of the following:

(1) Those fees, assessments, or charges imposed pursuant to the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), unless specifically authorized by Section 18502 of the Health and Safety Code.

(2) Those costs that are imposed on management by a court pursuant to Section 798.42.

(3) Any fee or other exaction imposed upon management for the specific purpose of defraying the cost of administration of any ordinance, rule, regulation, or initiative measure that establishes a maximum amount that management may charge a tenant for rent.

(4) Any tax imposed upon the property by a city, including a charter city, county, or city and county.

(e) Those fees and charges specified in subdivision (a) shall be separately stated on any monthly or other periodic billing to the homeowner. If the fee or charge has a limited duration or is

amortized for a specified period, the expiration date shall be stated on the initial notice and each subsequent billing to the homeowner while the fee or charge is billed to the homeowner.

SEC. 3. Section 798.53 of the Civil Code is amended to read:

798.53. The management shall meet and consult with the homeowners, upon written request, within 30 days of the request, either individually, collectively, or with representatives of a group of homeowners who have signed a request to be so represented on the following matters:

(a) Resident concerns regarding existing park rules that are not subject to Section 798.25.

(b) Standards for maintenance of physical improvements in the park.

(c) Addition, alteration, or deletion of service, equipment, or physical improvements.

(d) Rental agreements offered pursuant to Section 798.17.

Any collective meeting shall be conducted only after notice thereof has been given to all the requesting homeowners 10 days or more before the meeting.

CHAPTER 341

An act to add Section 53075.61 to the Government Code, relating to taxicabs.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 53075.61 is added to the Government Code, to read:

53075.61. A transportation inspector, authorized by a local government to cite any person for operating as a taxicab without a valid taxicab certificate, license, or permit required by any ordinance, may impound and retain possession of any vehicle used in a violation of the ordinance.

If the vehicle is seized from a person who is not the owner of the vehicle, the impounding authority shall immediately give notice to the owner by first-class mail.

The vehicle shall immediately be returned to the owner without cost to the owner if the infraction or violation is not prosecuted or is dismissed, the owner is found not guilty of the offense, or it is determined that the vehicle was used in violation of the ordinance without the knowledge and consent of the owner. Otherwise, the vehicle shall be returned to the owner upon payment of any fine ordered by the court. After the expiration of six weeks from the final disposition of the criminal case, the impounding authority may deal

with the vehicle as lost or abandoned property under Section 1411 of the Penal Code.

At any time, a person may make a motion in municipal court for the immediate return of a vehicle on the ground that there was no probable cause to seize it or that there is some other good cause, as determined by the court, for the return of the vehicle.

No officer or employee, however, shall impound any vehicle owned or operated by a nonprofit organization exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code which serves youth or senior citizens and provides transportation incidental to its programs or services.

CHAPTER 342

An act to amend Section 94350 of the Education Code, relating to postsecondary education, and making an appropriation therefor.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 94350 of the Education Code is amended to read:

94350. This chapter shall become inoperative on June 30, 1997, and as of January 1, 1998, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 343

An act to amend Section 27521 of the Health and Safety Code, relating to food facilities.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 27521 of the Health and Safety Code is amended to read:

27521. (a) "Food facility" means all of the following:

(1) Any food establishment, vehicle, vending machine, produce stand, swap meet prepackaged food stand, temporary food facility, satellite food distribution facility, stationary mobile food preparation unit, and mobile food preparation unit.

(2) Any place used in conjunction with the operations described

in paragraph (1), including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(3) A certified farmers' market, for purposes of permitting and enforcement.

(b) "Food facility" does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food, or a private home, church, private club, or other nonprofit association that gives or sells food to its members and guests at occasional events, as defined in Section 27528, or a for-profit entity that gives or sells food at occasional events, as defined in Section 27528, for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition for participating in the event.

(2) Premises set aside for winetasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, if no food or beverage is offered for sale for onsite consumption.

CHAPTER 344

An act to add Section 97.031 to the Revenue and Taxation Code, relating to local government finance.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 97.031 is added to the Revenue and Taxation Code, to read:

97.031. Notwithstanding any other provision of this chapter, for the 1994–95 fiscal year and each fiscal year thereafter, the amount of property tax revenue deemed allocated in the prior fiscal year to a county free library, or a library established as an independent special district, shall not be reduced for purposes of increasing the amount of property tax revenue to be allocated to another jurisdiction.

CHAPTER 345

An act to amend Sections 20017.79 and 20017.85 of the Government Code, relating to public retirement systems.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 20017.79 of the Government Code is amended to read:

20017.79. (a) "State safety member" shall also include officers and employees of the Board of Prison Terms, the Department of Corrections, the Department of the Youth Authority, or the Prison Industry Authority in the following classifications:

Classification Code	Classification
0617	Prison Industries Superintendent II (agriculture)
0648	Industrial Supervisor, Prison Industries (crop farm)
0679	Prison Industries Superintendent I (agriculture)
0682	Industrial Supervisor, Prison Industries (dairy)
0683	Assistant Dairy Operator
2303	Supervisor of Correctional Education Programs
2370	Supervisor of Vocational Instruction
2384	Supervisor of Commercial Diver Training
2311	Youth Authority Teacher
2429	Vocational Instructor (fire science) (correctional facility)
2433	Vocational Instructor (heavy equipment repair) (correctional facility)
1575	Prison Canteen Manager I
1576	Prison Canteen Manager II
7158	Prison Industries Administrator
7157	Prison Industries (general)
7156	Production Manager I, Prison Industries
7154	Prison Industries Superintendent II (maintenance and repair)
7162	Product Engineering Technician, Prison Industries

7163	Prison Industries Manager (wood products)
7164	Prison Industries Manager (metal products)
7165	Prison Industries Manager (textile products)
7170	Prison Industries Superintendent II (detergent)
7172	Prison Industries Superintendent II (wood products)
7175	Prison Industries Superintendent I (wood products)
7178	Industrial Supervisor, Prison Industries (wood products)
7179	Industrial Supervisor, Prison Industries (upholstery)
7190	Prison Industries Superintendent II (metal products)
7189	Prison Industries Superintendent I (metal products)
7191	Industrial Supervisor, Prison Industries (metal fabrication)
7192	Industrial Supervisor, Prison Industries (tool and die)
7195	Prison Industries Superintendent II (fabric products)
7196	Prison Industries Superintendent II (mattress and bedding)
7198	Industrial Supervisor, Prison Industries (fabric products)
7201	Tobacco Factory Superintendent
7205	Prison Industries Superintendent II (shoe manufacturing)
7206	Industrial Supervisor, Prison Industries (shoes and boots, lasting to packing)
7207	Industrial Supervisor, Prison Industries (shoe manufacturing)
7209	Prison Industries Superintendent II (knitting mill)
7210	Industrial Supervisor, Prison Industries (knitting mill)
7211	Industrial Supervisor, Prison Industries (knit goods finishing)
7214	Prison Industries Superintendent II (printing)
7215	Industrial Supervisor, Prison Industries (maintenance and repair)
7216	Industrial Supervisor, Prison Indus-

	tries (printing)
7218	Industrial Supervisor, Prison Industries (bindery)
2108	Prison Industries Superintendent II (laundry)
2109	Industrial Supervisor, Prison Industries (laundry)
8215	Senior Medical Technical Assistant
9908	Supervising Social Worker II, Youth Authority
9910	Supervising Social Worker I, Youth Authority
9911	Social Worker, Youth Authority
0716	Supervising Groundskeeper II (correctional facility)
0718	Lead Groundskeeper I (correctional facility)
0720	Lead Groundskeeper (correctional facility)
0743	Groundskeeper (correctional facility)
2004	Janitor Supervisor II (correctional facility)
2005	Janitor Supervisor I (correctional facility)
2006	Janitor (correctional facility)
2044	Supervising Housekeeper I (correctional facility)
2077	Seamer (correctional facility)
2080	Assistant Seamer (correctional facility)
2084	Barbershop Manager (correctional facility)
2086	Barber (correctional facility)
2111	Laundry Supervisor II (correctional facility)
2114	Laundry Supervisor I (correctional facility)
2117	Laundry Worker (correctional facility)
2150	Food Manager (correctional facility)
2147	Food Administrator II (correctional facility)
2153	Food Administrator I (correctional facility)
2182	Supervising Cook II (correctional facility)
2183	Supervising Cook I (correctional facility)
2186	Cook II (correctional facility)

2187	Cook I (correctional facility)
2221	Baker II (correctional facility)
2224	Baker I (correctional facility)
2245	Butcher—Meat Cutter II (correctional facility)
2195	Food Service Worker II (correctional facility)
2196	Food Service Worker I (correctional facility)
2305	Supervisor of Academic Instruction (correctional facility)
2284	Teacher (high school-arts and crafts) (correctional facility)
2285	Teacher (high school-business education) (correctional facility)
2287	Teacher (elementary-multiple subjects) (correctional facility)
2290	Teacher (high school-general education) (correctional facility)
2297	Teacher (ethnic studies) (correctional facility)
2291	Teacher (high school-home economics) (correctional facility)
2298	Teacher (librarian) (correctional facility)
2286	Teacher (cerebral palsied children) (correctional facility)
2295	Teacher (high school-physical education) (correctional facility)
2294	Teacher (high school-music) (correctional facility)
2371	Teacher (speech development and correction) (correctional facility)
2373	Teacher (hearing impaired) (correctional facility)
2292	Teacher (mentally retarded children) (correctional facility)
2288	Teacher (emotionally/learning handicapped) (correctional facility)
2289	Teacher (family life education) (correctional facility)
2423	Vocational Instructor (dog grooming and handling) (correctional facility)
2665	Vocational Instructor (powerplant mechanics) (correctional facility)
2387	Vocational Instructor (airframe mechanics) (correctional facility)
2396	Vocational Instructor (auto body and

	fender repair) (correctional facility)
2398	Vocational Instructor (auto mechanics) (correctional facility)
2399	Vocational Instructor (baking) (correctional facility)
2400	Vocational Instructor (bookbinding) (correctional facility)
2417	Vocational Instructor (carpentry) (correctional facility)
2420	Vocational Instructor (cosmetology) (correctional facility)
2422	Vocational Instructor (culinary arts) (correctional facility)
2628	Vocational Instructor (merchandising) (correctional facility)
2425	Vocational Instructor (drycleaning works) (correctional facility)
2426	Vocational Instructor (electrical work) (correctional facility)
2428	Vocational Instructor (electronics) (correctional facility)
2431	Vocational Instructor (furniture refinishing and repair) (correctional facility)
2432	Vocational Instructor (garment making) (correctional facility)
2597	Vocational Instructor (household appliance repair) (correctional facility)
2598	Vocational Instructor (industrial arts) (correctional facility)
2599	Vocational Instructor (instrument repair) (correctional facility)
2600	Vocational Instructor (janitorial service) (correctional facility)
2601	Vocational Instructor (landscape gardening) (correctional facility)
2611	Vocational Instructor (laundry work) (correctional facility)
2614	Vocational Instructor (machine shop practice) (correctional facility)
2615	Vocational Instructor (masonry) (correctional facility)
2619	Vocational Instructor (meat cutting) (correctional facility)
2627	Vocational Instructor (mechanical drawing) (correctional facility)
2630	Vocational Instructor (mill and cabi-

	net work) (correctional facility)
2640	Vocational Instructor (offset printing) (correctional facility)
2644	Vocational Instructor (painting) (correctional facility)
2661	Vocational Instructor (plumbing) (correctional facility)
2666	Vocational Instructor (printing) (correctional facility)
2667	Vocational Instructor (radiologic technology) (correctional facility)
2668	Vocational Instructor (refrigeration and air-conditioning repair) (correctional facility)
2669	Vocational Instructor (sewing machine repair) (correctional facility)
2670	Vocational Instructor (sheet metal work) (correctional facility)
2671	Vocational Instructor (shoemaking) (correctional facility)
2672	Vocational Instructor (silk screening process) (correctional facility)
2673	Vocational Instructor (storekeeping and warehousing) (correctional facility)
2674	Vocational Instructor (office machine repair) (correctional facility)
2675	Vocational Instructor (upholstering) (correctional facility)
2419	Vocational Instructor (commercial diver training) (correctional facility)
2677	Vocational Instructor (welding) (correctional facility)
2676	Vocational Instructor (vocational nursing) (correctional facility)
2853	Vocational Instructor (animal husbandry) (correctional facility)
2854	Vocational Instructor (building maintenance) (correctional facility)
2855	Vocational Instructor (computer and related technologies) (correctional facility)
2856	Vocational Instructor (diesel mechanics) (correctional facility)
2857	Vocational Instructor (drywall installer/taper) (correctional facility)
2858	Vocational Instructor (floor cover lay-

	er) (correctional facility)
2849	Vocational Instructor (office services and related technologies) (correctional facility)
2850	Vocational Instructor (roofer) (correctional facility)
2851	Vocational Instructor (small engine repair) (correctional facility)
2945	Senior Librarian (correctional facility)
2952	Librarian (correctional facility)
6216	Building Maintenance Worker (correctional facility)
6221	Warehouse Worker (correctional facility)
1502	Warehouse Manager II (correctional facility)
1504	Warehouse Manager I (correctional facility)
1505	Materials and Stores Supervisor II (correctional facility)
1508	Materials and Stores Supervisor I (correctional facility)
6379	Heavy Truck Driver (correctional facility)
6382	Truck Driver (correctional facility)
6392	Automotive Equipment Operator II (correctional facility)
6394	Automotive Equipment Operator I (correctional facility)
6471	Carpenter III (correctional facility)
6483	Carpenter I (correctional facility)
6521	Painter III (correctional facility)
6524	Painter II (correctional facility)
6474	Carpenter II (correctional facility)
6528	Painter I (correctional facility)
6534	Electrician III (correctional facility)
6538	Electrician II (correctional facility)
6544	Electrician I (correctional facility)
6545	Plumber III (correctional facility)
6550	Plumber I (correctional facility)
6557	Steamfitter Supervisor (correctional facility)
6617	Mason (correctional facility)
6941	Maintenance Mechanic (correctional facility)
6643	Locksmith I (correctional facility)
6699	Chief Engineer I (correctional facility)

6713	Stationary Engineer (correctional facility)
6718	Stationary Engineer Apprentice (four-year program) (correctional facility)
6715	Refrigeration Engineer (correctional facility)
6724	Water and Sewage Plant Supervisor (correctional facility)
6748	Chief of Plant Operation III (correctional facility)
6751	Chief of Plant Operation II (correctional facility)
6754	Chief of Plant Operation I (correctional facility)
6763	Supervisor of Building Trades (correctional facility)
6865	Equipment Maintenance Supervisor (correctional facility)
6867	Lead Automobile Mechanic (correctional facility)
6868	Automobile Mechanic (correctional facility)
6893	Automotive Pool Manager I (correctional facility)
6916	Electronics Technician (correctional facility)
8217	Medical Technical Assistant (correctional facility)
2645	Vocational Instructor (plastering) (correctional facility)
7200	Dry Cleaning Plant Supervisor
6772	Utility Shops Supervisor (correctional facility)
6801	Machinist (correctional facility)
6826	Heavy Equipment Mechanic (correctional facility)
2688	Vocational Instructor (eyewear manufacturing) (correctional facility)
2940	Supervising Librarian (correctional facility)
6594	Plumber II (correctional facility)
7194	Prison Industries Superintendent I (fabric products)
7197	Industrial Supervisor, Prison Industries (mattress and bedding)
7217	Prison Industries Superintendent II (bindery)

2000	Janitor Supervisor III (correctional facility)
6955	Fusion Welder (correctional facility)
6211	Skilled Laborer (correctional facility)
2156	Assistant Food Manager (correctional facility)
4132	Construction Supervisor (correctional facility)
6628	Glazier (correctional facility)
7145	Quality Assurance Manager
7146	Chief, Quality Assurance
4110	Chief, Day Labor Programs (correctional facility)
4109	Construction Supervisor III (correctional facility)
4108	Construction Supervisor II (correctional facility)
4107	Construction Supervisor I (correctional facility)
2015	Chief Assistant General Manager, Prison Industries
4302	Assistant General Manager, Operations
7199	Pest Control Technician (correctional facility)
7208	Correctional Business Manager I, Department of Corrections
4744	Correctional Business Manager II, Department of Corrections
7204	Industrial Supervisor, Prison Industries (dental laboratory)
7321	Industrial Supervisor, Prison Industries (silkscreen)
7109	Prison Industries Superintendent I (coffee roasting and grinding)
7203	Prison Industries Superintendent I (dental laboratory)
7350	Prison Industries Superintendent I (egg production)
7351	Prison Industries Superintendent I (fiberglass products)
7352	Prison Industries Superintendent I (furniture refurbishing)
7320	Prison Industries Superintendent I (silkscreen)
7202	Prison Industries Superintendent II (dental laboratory)
7319	Prison Industries Superintendent II (silkscreen)

2869	Vocational Instructor (dental technology) (correctional facility)
5415	Vocational Instructor (telemarketing/customer service) (correctional facility)
1793	Property Controller I (correctional facility)
1794	Property Controller II (correctional facility)
4760	Procurement and Services Officer I (correctional facility)
4761	Procurement and Services Officer II (correctional facility)
6303	Correctional Plant Supervisor, Department of Corrections
6304	Correctional Plant Manager I, Department of Corrections
6305	Correctional Plant Manager II, Department of Corrections
3080	Quality Control Technician, Prison Industries (cleaning products)
3082	Substitute Academic Teacher (correctional facility)
2727	Language, Speech and Hearing Specialist
3073	Teacher (adaptive physical education) (correctional facility)
3074	Teacher (high school-English/language arts) (correctional facility)
3075	Teacher (English language development) (correctional facility)
3076	Teacher (high school-foreign language) (correctional facility)
3077	Teacher (high school-mathematics) (correctional facility)
3078	Teacher (high school-science) (correctional facility)
3079	Teacher (high school-social science) (correctional facility)
2734	Resource Specialist, Special Education
9854	School Psychologist
6400	Teaching Assistant (correctional facility)
9344	Chief Dentist (correctional facility)
9267	Chief Physician and Surgeon (correctional facility)
9279	Clinical Dietician (correctional facility)

9293	Clinical Laboratory Technologist (correctional facility)
9296	Dental Assistant (correctional facility)
9298	Dental Hygienist (correctional facility)
9299	Dental Laboratory Technician (correctional facility)
9268	Dentist (correctional facility)
9307	Hospital Aid (correctional facility)
9265	Laboratory Assistant (correctional facility)
9273	Nurse Anesthetist (correctional facility)
9353	Nurse Instructor (correctional facility)
9278	Nurse Practitioner (correctional facility)
9280	Occupational Therapist (correctional facility)
9281	Physical Therapist I (correctional facility)
9342	Physical Therapist II (correctional facility)
9269	Physician and Surgeon (correctional facility)
9282	Psychiatric Social Worker (correctional facility)
9283	Psychologist—Clinical (correctional facility)
9284	Psychology Associate (correctional facility)
9354	Psychology Internship Director (correctional facility)
9285	Psychometrist (correctional facility)
9274	Public Health Nurse I (correctional facility)
9345	Public Health Nurse II (correctional facility)
9315	Radiologic Technologist (correctional facility)
9286	Recreation Therapist (correctional facility)
9275	Registered Nurse (correctional facility)
9316	Respiratory Care Practitioner (correctional facility)
9348	Senior Clinical Laboratory Technologist (correctional facility)

9266	Senior Laboratory Assistant (correctional facility)
9346	Senior Occupational Therapist (correctional facility)
9270	Senior Psychiatrist (specialist) (correctional facility)
9271	Senior Psychiatrist (supervisor) (correctional facility)
9287	Senior Psychologist (specialist) (correctional facility)
9288	Senior Psychologist (supervisor) (correctional facility)
9289	Senior Psychologist (correctional facility)
9350	Senior Radiologic Technologist (specialist) (correctional facility)
9351	Senior Radiologic Technologist (supervisor) (correctional facility)
9272	Staff Psychiatrist (correctional facility)
9290	Staff Psychologist—Clinical (correctional facility)
9349	Supervising Clinical Laboratory Technologist (correctional facility)
9276	Supervising Psychiatric Nurse (correctional facility)
9291	Supervising Psychiatric Social Worker I (correctional facility)
9292	Supervising Psychiatric Social Worker II (correctional facility)
9317	Supervising Registered Nurse I (correctional facility)
9318	Supervising Registered Nurse II (correctional facility)
9319	Supervising Registered Nurse III (correctional facility)
9277	Surgical Nurse I (correctional facility)
9329	Surgical Nurse II (correctional facility)
5447	Assistant Warden, Psychiatric Services (correctional facility)
7547	Chief Medical Officer (correctional facility)
7612	Chief Psychiatrist (correctional facility)
9859	Chief Psychologist (correctional facility)
4910	Correctional Health Services Ad-

	ministrator I (correctional facility)
4912	Correctional Health Services Administrator II (correctional facility)
2578	Chief Deputy, Clinical Services (correctional facility)
7971	Optometrist (correctional facility)

(b) In addition, "state safety member" shall also include officers and employees of the Department of Corrections, the Department of the Youth Authority, or the Prison Industry Authority in any classification of vocational instructor, industrial supervisor, industrial superintendent, assistant industrial superintendent, or production manager II (prison industries) that is established on or after January 1, 1984, if the Department of Personnel Administration and the State Personnel Board approve the inclusion of the classification.

(c) "State safety member" shall also include officers and employees in parenthetical specialty classes when the core class has already been expressly included in the state safety membership category if the Department of Personnel Administration and the State Personnel Board approve the inclusion of the classifications. The inclusion shall not be effective until notice of the inclusion has been received by the Board of Administration.

(d) Any of these officers or employees in employment on the operative date of an amendment to this section and who becomes a state safety member as a result of that amendment, may elect by a writing filed with the board prior to 90 days after notification by the board, to be restored to his or her previous status as a state industrial member. Upon the filing of the election the member shall cease to be a state safety member, and his or her rights and obligations shall be restored prospectively and retroactively to the operative date of that amendment.

SEC. 2. Section 20017.85 of the Government Code is amended to read:

20017.85. (a) "State safety member" shall also include officers and employees of the following departments with the following class title :

Schematic Code	Class Code	Classification	Department
VC 95	8358	State Security Officer	General Services
VC 80	1986	Chief Museum Security Officer	Museum of Science Industry
VC 85	1988	Supervising Museum Security Officer	Museum of Science Industry

VC 90	1992	Museum Security Officer	Museum of Science Industry
BS 57	0891	Park Safety & Enforcement Supervisor	Park and Recreation
BS 53	0890	Park Safety & Enforcement Specialist	Park and Recreation
VC 40	1935	Hospital Peace Officer III	Developmental Services, Mental Health
VC 45	1936	Hospital Peace Officer II	Developmental Services, Mental Health, Consumer Affairs
VC 48	1937	Hospital Peace Officer I	Developmental Services, Mental Health, Consumer Affairs
VZ 35	8990	Firefighter/Security Guard	Forestry, Vets Affairs
VZ 25	8989	Supervising Firefighter/Security Guard	Vets Affairs
VZ 10	8988	Chief Fire Fighter/Security Guard	Vets Affairs
VY 85	8997	Arson & Bomb Investigator	Fire Marshal
VY 65	8999	Supervising Arson & Bomb Investigator	Fire Marshal
VY 60	8966	Fire Prevention Engineer	Fire Marshal
VY 70	8969	Deputy State Fire Marshal III	Fire Marshal
VY 80	8972	Deputy State Fire Marshal II	Fire Marshal
VY 90	8975	Deputy State Fire Marshal I	Fire Marshal
VZ 70	9090	Fire Service Training Specialist III	Fire Marshal
VZ 80	9089	Fire Service Training Specialist II	Fire Marshal
VZ 90	9088	Fire Service Training Specialist I	Fire Marshal
VZ 60	9091	Fire Service Training Supervisor	Fire Marshal
VW 40	9030	Chief, Food and Drug Section	Health Services
VW 45	9027	Assistant Chief, Food & Drug Section	Health Services
VW 60	9028	Food & Drug Program Coordinator	Health Services
VW 65	9029	Food & Drug Regional Administrator	Health Services
VW 70	9036	Food & Drug Specialist IV	Health Services
VW 80	9039	Food & Drug Specialist III	Health Services
VW 90	9042	Food & Drug Specialist II	Health Services

VX 10	9043	Food & Drug Trainee	Health Services
VX 30	9007	Food Technology Specialist	Health Services
VI 40	8613	Chief, Investigation Bureau, DHS	Health Services
VI 62	8609	Chief, Bureau of Fraudulent Claims, Dept. Ins.	Insurance
VP 80	8678	Supervising Special Investigator, ABC	ABC
VP 70	8677	District Administrator, ABC	ABC
VP 50	8673	Deputy Division Chief, ABC	ABC
VI 30	8610	Chief, Division of Investigations, Dept. of Consumer Affairs	Consumer Affairs
UA 70	8152	Coordinator, Urban Search & Rescue	Office of Emergency Services
UA 80	8153	Senior Coordinator, Urban Search & Rescue	Office of Emergency Services

(b) Any person employed in the classifications described in subdivision (a) in the department indicated may elect, within 90 days of the operative date of this section, to remain subject to the miscellaneous service retirement benefit by filing an irrevocable notice of election with the board. A member who so elects shall be subject to the reduced benefit factors specified in Section 21251.13 of the Government Code only for service also included in the federal system.

(c) This section shall not become applicable to any member included in a classification until the time a ruling or regulation authorizing the inclusion of persons employed in that classification within the definition of "policeman" or "fireman," or both, is issued by the federal agency for purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C.A. 418 (d)(5)(A)).

CHAPTER 346

An act to amend Section 58004 of, and to add Section 58005 to, the Food and Agricultural Code, relating to agriculture, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 58004 of the Food and Agricultural Code is amended to read:

58004. Except as provided in Section 58005, fees, charges, and costs that are collected under this chapter shall be paid into the State

Treasury to the credit of the General Fund.

SEC. 2. Section 58005 is added to the Food and Agricultural Code, to read:

58005. All fees, charges, and costs that are received under this chapter for the collection, analysis, and dissemination of market news shall be paid into the State Treasury monthly to the credit of the Department of Food and Agriculture Fund. Funds received for these purposes, upon appropriation, shall be expended by the department for market news services. The secretary may adopt regulations implementing procedures for receiving fees, charges, and reimbursement for costs from users of market news.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide the people of California with an opportunity to provide funding as soon as possible for the dissemination of commodity pricing information for agriculture which has become an essential component in the marketing of California's agricultural products, it is necessary for this act to take effect immediately.

CHAPTER 347

An act to amend Section 13554.2 of the Water Code, relating to water.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 13554.2 of the Water Code is amended to read:

13554.2. (a) Any person or entity proposing the use of recycled water shall reimburse the State Department of Health Services for reasonable costs that department actually incurs in performing duties pursuant to this chapter.

(b) (1) Upon a request from the person or entity proposing the use of recycled water, the State Department of Health Services shall, within a reasonable time after the receipt of the request, provide an estimate of the costs that it will reasonably incur in the performance of its duties pursuant to this chapter.

(2) For purposes of implementing subdivision (a), that department shall maintain a record of its costs. In determining those costs, that department may consider costs that include, but are not limited to, costs relating to personnel requirements, materials, travel, and office overhead. The amount of reimbursement shall be equal to, and may not exceed, that department's actual costs.

(c) With the consent of the person or entity proposing the use of recycled water, the State Department of Health Services may delegate all or part of the duties that department performs pursuant to this chapter within a county to a local health agency authorized by the board of supervisors to assume these duties, if, in the judgment of that department, the local health agency can perform these duties. Any person or entity proposing the use of recycled water shall reimburse the local health agency for reasonable costs that the local health agency actually incurs in the performance of its duties delegated pursuant to this subdivision.

(d) (1) Upon a request from the person or entity proposing the use of recycled water, the local health agency shall, within a reasonable time after the receipt of the request, provide an estimate of the cost it will reasonably incur in the performance of its duties delegated under subdivision (c).

(2) The local health agency, if delegated duties pursuant to subdivision (c), shall maintain a record of its costs that include, but is not limited to, costs relating to personnel requirements, materials, travel, and office overhead. The amount of reimbursement shall be equal to, and may not exceed, the local health agency's actual costs.

(e) The State Department of Health Services or local health agency shall complete its review of a proposed use of recycled water within a reasonable period of time. That department shall submit to the person or entity proposing the use of recycled water a written determination as to whether the proposal submitted is complete for purposes of review within 30 days from the date of receipt of the proposal and shall approve or disapprove the proposed use within 30 days from the date on which that department determines that the proposal is complete.

(f) An invoice for reimbursement of services rendered shall be submitted to the person or entity proposing the use of recycled water subsequent to completion of review of the proposed use, or other services rendered, that specifies the number of hours spent by the State Department of Health Services or local health agency, specific tasks performed, and other costs actually incurred. Supporting documentation, including receipts, logs, timesheets, and other standard accounting documents, shall be maintained by that department or local health agency and copies, upon request, shall be provided to the person or entity proposing the use of recycled water.

(g) For the purposes of this section, "person or entity proposing the use of recycled water" means the producer or distributor of recycled water submitting a proposal to the department.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that

the act takes effect pursuant to the California Constitution.

CHAPTER 348

An act to amend Section 853.2 of the Penal Code, relating to peace officers.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 853.2 of the Penal Code is amended to read:

853.2. (a) All courts and officers now or hereafter having and exercising jurisdiction in any county which is now or may hereafter be formed in any part of this state bordering upon the Colorado River, or any lake formed by, or which is a part of, the Colorado River, shall have and exercise jurisdiction in all criminal cases upon those waters concurrently with the courts of and officers of the State of Arizona, so far and to the extent that any of these bodies of water form a common boundary between this state and the State of Arizona. In addition, the officers shall have concurrent jurisdiction with the officers of the State of Arizona on any land mass within 25 air miles of the Colorado River, or within 25 air miles of any lake formed by, or that is a part of, the Colorado River.

(b) This section applies only to those crimes which are established in common between the States of Arizona and California; and an acquittal or conviction and sentence by one state shall bar a prosecution for the same act or omission by the other.

(c) This compact shall not be construed to bar the enforcement of the penal laws of either state not established in common with the other, provided that the act or omission proscribed occurs on that state's side of the river channel boundary.

(d) This compact does not apply to Division 3.5 (commencing with Section 9840) of the Vehicle Code, relating to registration of vessels, or to Section 658.7 of the Harbors and Navigation Code, relating to the display of a ski flag.

CHAPTER 349

An act to add Section 12304.2 to the Welfare and Institutions Code, relating to public social services.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 12304.2 is added to the Welfare and Institutions Code, to read:

12304.2. (a) A recipient who receives services under this article through either a contract or managed care provider may, subject to program requirements, select any qualified person to provide care under this article.

(b) For purposes of this section, "qualified person" means any employee of the contract or managed care provider through which the recipient may receive services under this article who is available and eligible to provide the services.

CHAPTER 350

An act to amend Section 44670.6 of the Education Code, relating to educational programs.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 44670.6 of the Education Code is amended to read:

44670.6. (a) Schools may include as part of their school development plan, the provision of time during the regular school year to conduct professional development activities pursuant to a school development plan and shall receive full average daily attendance reimbursement under the provisions of Section 46300. The time shall not exceed eight days each year.

(b) It is the intent of the Legislature that school districts revise salary schedules to allow for and give priority to salary increments related to continuing professional development on the basis of time spent in high quality professional development, including subject matter coursework, pursuant to school development plans created under this article, and school improvement plans created pursuant to Chapter 6 (commencing with Section 52000) of Part 28. The salary schedule revision should include incentives for instructional paraprofessionals to pursue education and training to improve

instructional skills and to obtain teaching credentials.

(c) (1) In the event a school district revises its salary schedules pursuant to this section, any activity engaged in by a teacher for professional development to enable the teacher to obtain a salary increment on a revised salary schedule shall satisfy both of the following conditions:

(A) The activity shall be approved, in advance, by the district superintendent or site administrator.

(B) The activity shall meet the requirements of subdivision (b) of Section 44277.

(2) Any activity specified in paragraph (1) shall also satisfy one of the following:

(A) The activity shall relate to the current teaching assignment of the teacher.

(B) The activity shall be consistent with the school development plan created under this article or school improvement plan created pursuant to Chapter 6 (commencing with Section 52000) of Part 28 for the school in which the teacher is currently employed.

(d) It is the intent of the Legislature that school districts revise procedures related to professional growth activities required by Section 44277 to ensure that activities consistent with school and school district development plans created pursuant to this article, and school improvement plans created pursuant to Chapter 6 (commencing with Section 52000) of Part 28 satisfy the requirements.

CHAPTER 351

An act to amend Section 8670.31 of the Government Code, relating to oil spills.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 8670.31 of the Government Code is amended to read:

8670.31. (a) In accordance with the rules, regulations, and policies established by the administrator pursuant to Section 8670.28, each operator of a vessel or a marine facility shall prepare and implement an oil spill contingency plan applicable to the vessel or marine facility. Blanket contingency plans for similar vessels and marine facilities may be used for this purpose.

(b) Each contingency plan required under this section shall be submitted to the administrator within 90 days after the effective date of the rules, regulations, and policies required under Section 8670.28.

(c) The administrator shall review each submitted contingency

plan to determine whether it complies with the administrator's rules, policies, and regulations.

(d) Each contingency plan submitted shall be approved or disapproved within 180 days after receipt by the administrator. The administrator may approve or disapprove portions of a plan. A plan is not deemed approved until all portions are approved pursuant to this section. The disapproved portion shall be subject to the procedures contained in subdivision (e).

(e) If the administrator finds the submitted contingency plan is inadequate under the rules, policies, and regulations of the administrator, the plan shall be returned to the submitter with written reasons why the plan was found inadequate and, if practicable, suggested modifications or alternatives, if appropriate. The submitter shall submit a new or modified plan within 90 days after the earlier plan was returned, responding to the findings and incorporating any suggested modifications. Such a resubmittal shall be treated as a new submittal and processed according to the provisions of this section, except that the resubmitted plan shall be deemed approved unless the administrator acts pursuant to subdivision (d). Failure to gain approval after the second submission may be determined by the administrator to be a violation of this chapter.

(f) Prior to considering a contingency plan for approval, the administrator may make an onsite inspection and require a drill of any contingency plan that is submitted.

(g) After the plan has been approved, it shall be resubmitted on April 1, 1996, and on April 1, 1998, and every five years thereafter. The administrator may require earlier or more frequent resubmission, if warranted. Circumstances that would require an earlier resubmission include, but are not limited to, changes in regulations, new oil spill response technologies, deficiencies identified in the evaluation conducted pursuant to Section 8670.19, or a need for a different oil spill response because of increased need to protect endangered species habitat. The administrator may deny approval of the resubmitted plan if it is no longer considered adequate according to the adopted rules, regulations, and policies of the administrator at the time of resubmission.

(h) (1) Each operator of a vessel or marine facility who is required to file an oil spill response plan or update pursuant to provisions of federal law regulating marine oil spill response plans shall, for informational purposes only, submit a copy of that plan or update to the administrator at the time that it is approved by the relevant federal agency.

(2) A vessel or marine facility operator is not required to submit a copy of the response plan or update specified in paragraph (1) to the administrator if either the vessel or facility is exempt from having to file a response plan with the state, or if the content of the response plan submitted by the operator pursuant to Section 8670.28 is substantially the same as the federal response plan or update.

CHAPTER 352

An act to add Section 1170.82 to the Penal Code, relating to sentencing.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 1170.82 is added to the Penal Code, to read:

1170.82. Upon a conviction of a violation of Section 11352, 11360, 11379, or 11379.5 of the Health and Safety Code, the fact that the person who committed the offense knew, or reasonably should have known, that any of the following circumstances existed with regard to the person to whom he or she unlawfully sold, furnished, administered, or gave away a controlled substance, shall be a circumstance in aggravation of the crime in imposing a term pursuant to subdivision (b) of Section 1170:

(a) The person was pregnant at the time of the selling, furnishing, administering, or giving away of the controlled substance.

(b) The person had been previously convicted of a violent felony, as defined in subdivision (c) of Section 667.5.

(c) The person was in psychological treatment for a mental disorder or for substance abuse at the time of the selling, furnishing, administering, or giving away of the controlled substance.

CHAPTER 353

An act to amend Sections 12382.2 and 12382.5 of the Insurance Code, relating to insurance.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 12382.2 of the Insurance Code is amended to read:

12382.2. (a) Out of total charges for policies of title insurance, a title insurer shall add to and set aside in its unearned premium reserve commencing as of January 1, 1965, an amount equal to 2 percent of those total charges for policies of title insurance, which amount shall be deemed and shall constitute the unearned premiums due or received from all such policies or contracts. Except as otherwise provided in Section 12382.6, if any policy of title insurance shall be reinsured, the reinsuring company shall be required to set aside in its unearned premium reserve only that portion, if any, of

that 2 percent as shall have not theretofore been set aside by the ceding company. This subdivision shall apply to policies issued and reinsured prior to January 1, 1988.

(b) Out of total charges for policies of title insurance, a title insurer shall add to and set aside in its unearned premium reserve, an amount equal to 2½ percent of those total charges for policies of title insurance, which amount shall be deemed and shall constitute the unearned premiums due or received from all such policies or contracts. Except as otherwise provided in Section 12382.6, if any policy of title insurance shall be reinsured, the reinsurer shall be required to set aside in its unearned premium reserve only that portion, if any, of the 2½ percent as shall have not theretofore been set aside by the ceding company. This subdivision shall apply to policies issued and reinsured on and after January 1, 1988, and prior to January 1, 1994.

(c) Out of total charges for policies of title insurance and, commencing no later than the year beginning January 1, 1994, a title insurer shall add to and set aside in its unearned premium reserve an amount equal to 4½ percent of the sum of the following items, for all jurisdictions where the title insurer operates, set forth in the title insurer's annual statement filed in this state:

(1) "Direct premiums written" as set forth in Schedule T.

(2) "Other income" as set forth in Schedule T.

(3) "Premiums written during year—reinsurance assumed" less "Premiums for reinsurance ceded during year."

(d) The insurer shall calculate an adjusted unearned premium reserve as of December 31, 1993. The adjusted unearned premium reserve shall be calculated as if subdivision (c) of this section and subdivision (c) of Section 12382.5 had been in effect for all years beginning on or after January 1, 1974. For purposes of this calculation, the balance of the unearned premium reserve as of December 31, 1973, shall be deemed to be zero. If the adjusted unearned premium reserve so calculated exceeds the aggregate amount set aside for unearned premiums in the insurer's December 31, 1993, Annual Statement (Form 9), the insurer shall, out of total charges for policies of title insurance, increase its unearned premium reserve by an amount that is not less than one-sixth of that excess in each of the succeeding six years, commencing no later than the year beginning January 1, 1994, until the entire excess has been added.

SEC. 2. Section 12382.5 of the Insurance Code is amended to read:

12382.5. (a) The aggregate of the amounts set aside in unearned premium reserve in any calendar year pursuant to subdivision (a) of Section 12382.2 shall be released from that reserve and restored to net profits pursuant to the following formula: one-tenth of that aggregate sum on July 1 of each of the five years next succeeding the year of addition to the reserve and one-thirtieth of that aggregate sum on July 1 of each succeeding year thereafter until the entire sum shall have been so released and restored to net profits. The aggregate

of the amounts set aside in unearned premium reserve pursuant to subdivision (a) of Section 12382 shall be released from the reserve and restored to net profits and surplus pursuant to the foregoing formula, provided that the amounts so set aside shall be treated as if subdivision (a) of Section 12382 and this section had been effective during the calendar years 1962, 1963, and 1964.

(b) The aggregate of the amounts set aside in unearned premium reserve in any calendar year pursuant to subdivision (b) of Section 12382.2 shall be released from the reserve and restored to net profits pursuant to the following formula: one-tenth of the aggregate sum on July 1 of each of the 10 years next succeeding the year of addition to the reserve until the entire sum shall have been so released and restored to net profits.

(c) The aggregate of the amounts set aside in unearned premium reserve in any calendar year pursuant to subdivision (c) of Section 12382.2 shall be released from the reserve and restored to net profits over a period of 20 years pursuant to the following formula: 10 percent of the aggregate sum on July 1 of each of the five years next succeeding the year of addition; 9 percent of the aggregate sum on July 1 of each of the next succeeding five years; and one-half of 1 percent of the aggregate sum on July 1 of each of the last 10 years.

(d) The aggregate of the amounts set aside in unearned premium reserve in any calendar year as adjustments to the insurer's unearned premium reserve pursuant to subdivision (d) of Section 12382.2 shall be released from the reserve and restored to net profits, or equity if the additions required by subdivision (d) of Section 12382.2 reduced equity directly, over a period not exceeding 10 years pursuant to the following table:

Year of addition	Release
1994, or earlier	Equally over 10 years
1995	Equally over 9 years
1996	Equally over 8 years
1997	Equally over 7 years
1998	Equally over 6 years
1999	Equally over 5 years

SEC. 3. This act does not constitute a change in, but is declaratory of, existing law.

CHAPTER 354

An act to amend Section 4502 of the Penal Code, relating to prison weapons.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 4502 of the Penal Code is amended to read:

4502. (a) Every person who, while at or confined in any penal institution, while being conveyed to or from any penal institution, or while under the custody of officials, officers, or employees of any penal institution, possesses or carries upon his or her person or has under his or her custody or control any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, or metal knuckles, any explosive substance, or fixed ammunition, any dirk or dagger or sharp instrument, any pistol, revolver, or other firearm, or any tear gas or tear gas weapon, is guilty of a felony and shall be punished by imprisonment in the state prison for two, three, or four years, to be served consecutively.

(b) Every person who, while at or confined in any penal institution, while being conveyed to or from any penal institution, or while under the custody of officials, officers, or employees of any penal institution, manufactures or attempts to manufacture any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, or metal knuckles, any explosive substance, or fixed ammunition, any dirk or dagger or sharp instrument, any pistol, revolver, or other firearm, or any tear gas or tear gas weapon, is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years, to be served consecutively.

(c) For purposes of this section, "penal institution" means the state prison, a prison road camp, prison forestry camp, or other prison camp or farm, or a county jail or county road camp.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 355

An act to add Section 5626.1 to the Public Resources Code, relating to the Olivehurst Youth Center Building.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 5626.1 is added to the Public Resources Code, to read:

5626.1. (a) Notwithstanding Sections 5625 and 5626, the Olivehurst Public Utility District may use the Youth Center Building in Olivehurst, which was developed pursuant to a grant made under Section 5625, for youth and adult recreational programs, community service programs, and other public benefit and recreational programs consistent with the jurisdiction of the Olivehurst Public Utility District.

(b) Notwithstanding Sections 5625 and 5626, the Olivehurst Public Utility District may lease or enter into other forms of agreement for the recreational or community service use of the Youth Center Building in Olivehurst by public or private organizations or individuals, under terms and conditions approved by the Board of Directors of the Olivehurst Public Utility District.

CHAPTER 356

An act to amend Section 2954.7 of the Civil Code, relating to mortgages.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 2954.7 of the Civil Code is amended to read:

2954.7. Except when a statute, regulation, rule, or written guideline promulgated by an institutional third party applicable to notes or evidence of indebtedness secured by a deed of trust or mortgage purchased in whole or in part by an institutional third party specifically prohibits cancellation during the term of the indebtedness, if a borrower so requests and the conditions established by paragraphs (1) to (6), inclusive, of subdivision (a) are met, a borrower may terminate future payments for private mortgage insurance, or mortgage guaranty insurance as defined in subdivision (a) of Section 12640.02 of the Insurance Code, issued as a condition to the extension of credit in the form of a loan evidenced

by a note or other evidence of indebtedness which is secured by a deed of trust or mortgage on the subject real property.

(a) The following conditions shall be satisfied in order for a borrower to be entitled to terminate payments for private mortgage insurance or mortgage guaranty insurance:

(1) The request to terminate future payments for private mortgage insurance or mortgage guaranty insurance shall be in writing.

(2) The origination date of the note or evidence of indebtedness shall be at least two years prior to the date of the request.

(3) The note or evidence of indebtedness shall be for personal, family, household, or purchase money purposes, secured by a deed of trust or mortgage on owner-occupied, one to four unit, residential real property.

(4) The unpaid principal balance owed on the secured obligation that is the subject of the private mortgage insurance or mortgage guaranty insurance shall not be more than 75 percent, unless the borrower and lender or servicer of the loan agree in writing upon a higher loan to value ratio, of either of the following:

(A) The sale price of the property at the origination date of the note or evidence of indebtedness, provided that the current fair market value of the property is equal to or greater than the original appraised value used at the origination date.

(B) The current fair market value of the property as determined by an appraisal, the cost of which shall be paid for by the borrower. The appraisal shall be ordered and the appraiser shall be selected by the lender or servicer of the loan.

(5) The borrower's monthly installments of principal, interest, and escrow obligations on the encumbrance or encumbrances secured by the real property shall be current at the time the request is made and those installments shall not have been more than 30 days past due over the 24-month period immediately preceding the request, provided further, that no notice of default has been recorded against the security real property pursuant to Section 2924, as a result of a nonmonetary default by the borrower (trustor) during the 24-month period immediately preceding the request.

(b) This section does not apply to any of the following:

(1) A note or evidence of indebtedness secured by a deed of trust or mortgage, or mortgage insurance, executed under the authority of Part 3 (commencing with Section 50900) or Part 4 (commencing with Section 51600) of Division 31 of the Health and Safety Code.

(2) Any note or evidence of indebtedness secured by a deed of trust or mortgage that is funded in whole or in part pursuant to authority granted by statute, regulation, or rule that, as a condition of that funding, prohibits or limits termination of payments for private mortgage insurance or mortgage guaranty insurance during the term of the indebtedness.

(3) Notes or evidence of indebtedness that require private mortgage insurance and were executed prior to January 1, 1991.

(c) If the note secured by the deed of trust or mortgage will be or has been sold in whole or in part to an institutional third party, adherence to the institutional third party's standards for termination of future payments for private mortgage insurance or mortgage guaranty insurance shall be deemed in compliance with the requirements of this section.

(d) For the purposes of this section, "institutional third party" means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association and other substantially similar institutions, whether public or private, provided the institutions establish and adhere to rules applicable to the right of cancellation of private mortgage insurance or mortgage guaranty insurance, which are the same or substantially the same as those utilized by the above-named institutions.

SEC. 2. The amendments made by this act to Section 2954.7 of the Civil Code shall not apply to notes or evidence of indebtedness that require private mortgage insurance and were executed prior to March 1, 1995.

CHAPTER 357

An act to amend Section 21200 of the Vehicle Code, relating to bicycles.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 21200 of the Vehicle Code is amended to read:

21200. (a) Every person riding a bicycle upon a highway has all the rights and is subject to all the provisions applicable to the driver of a vehicle by this division, including, but not limited to, provisions concerning driving under the influence of alcoholic beverages or drugs, and by Division 10 (commencing with Section 20000), Section 27400, Division 16.7 (commencing with Section 39000), Division 17 (commencing with Section 40000.1), and Division 18 (commencing with Section 42000), except those provisions which by their very nature can have no application.

(b) (1) Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, operating a bicycle during the course of his or her duties is exempt from the requirements of subdivision (a), except as those requirements relate to driving under the influence of alcoholic beverages or drugs, if the bicycle is being operated under any of the following circumstances:

(A) In response to an emergency call.

(B) While engaged in rescue operations.

(C) In the immediate pursuit of an actual or suspected violator of the law.

(2) This subdivision does not relieve a peace officer from the duty to operate a bicycle with due regard for the safety of all persons using the highway.

CHAPTER 358

An act to amend Section 229.5 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 229.5 of the Welfare and Institutions Code is amended to read:

229.5. (a) Notwithstanding any other provision of law, a juvenile justice commission may inquire into the operation of any group home that serves wards or dependent children of the juvenile court and is located in the county or region the commission serves. The commission may review the safety and well-being of wards or dependent children placed in the group home and the program and services provided in relation to the home's published program statement.

(b) In conducting its review, the commission shall respect the confidentiality of minors' records and other information protected under other provisions of law. It may not review confidential records, such as court or case records of a child, personnel records of employees, or financial or donor records of the group home.

(c) The commission shall give the group home manager at least 24 hours' advance notice of a visit to a group home. If the commission believes that there is a serious violation of applicable licensing laws or regulations or that residents of a group home are in danger of physical or mental abuse, abandonment or other substantial threat to their health and safety, the commission shall notify the Community Care Licensing Division of the State Department of Social Services for appropriate action, shall consult with the presiding judge of the juvenile court and chief probation officer as to whether or not a visit is appropriate, and shall notify other juvenile justice commissions of its actions, as appropriate.

(d) Upon the completion of a visit, if the commission finds any condition in the group home that poses a danger to its residents or otherwise violates any applicable law, ordinance, or regulation, the commission shall verbally advise the group home manager of its

findings, unless it determines that the advisement could be detrimental to the children placed there, and shall send written confirmation of its findings to the group home manager within 14 days. The commission may also report its findings to the presiding judge of the juvenile court, chief probation officer, State Department of Social Services, or other juvenile justice commissions as appropriate. A group home manager may meet with the juvenile justice commission, chief probation officer, county welfare director, juvenile court, or the State Department of Social Services to resolve any problem or to submit a plan of correction.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 359

An act to amend Section 11580.06 of the Insurance Code, relating to insurance.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 11580.06 of the Insurance Code is amended to read:

11580.06. Except as may be otherwise provided in this article:

(a) The term "motor vehicle" means any vehicle designed for use principally upon streets and highways and subject to motor vehicle registration under the laws of this state.

(b) The term "insured" shall include the person or persons to whom any policy subject to this article is issued as named insured and any other person to whom coverage is afforded under the terms of any such policy.

(c) The term "bodily injury" shall include sickness or disease, including death resulting therefrom.

(d) The term "automobile" means any self-propelled motor vehicle, with neither more than nor less than four wheels, designed for use principally upon streets and highways and subject to motor

vehicle registration under the laws of this state.

(e) The term "arrest" shall have the same meaning as set forth in Section 834 of the Penal Code.

(f) The term "operated by" or "when operating" shall be conclusively presumed to describe the conduct of the person sitting immediately behind the steering controls of the motor vehicle. The person shall be conclusively presumed to be the sole operator of the motor vehicle.

(g) The term "use" when applied to a motor vehicle shall only mean operating, maintaining, loading, or unloading a motor vehicle.

(h) The word "terms" when used with reference to a policy or endorsement includes the provision of coverage, exclusions, restrictions, conditions, deductions, and limits.

(i) Unless otherwise provided in this code, the term "leased motor vehicle" means a motor vehicle leased or rented by a lessor licensed to lease motor vehicles under a written contract for a period of six months or longer.

CHAPTER 360

An act to amend Sections 8552.7 and 8552.9 of the Fish and Game Code, relating to commercial fishing.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 8552.7 of the Fish and Game Code is amended to read:

8552.7. The department shall reissue a herring permit which has been transferred pursuant to Section 8552.2 or 8552.6 upon payment of a transfer fee by the transferee of the permit. Before April 1, 1997, the transfer fee is two thousand five hundred dollars ($2,500), and, on and after April 1, 1997, the transfer fee is five thousand dollars ($5,000). The fees shall be deposited in the Fish and Game Preservation Fund and shall be expended for research and management activities to maintain and enhance herring resources pursuant to subdivision (a) of Section 8052.

SEC. 2. Section 8552.9 of the Fish and Game Code is amended to read:

8552.9. (a) Notwithstanding Section 8552.7, herring permits issued for use in Tomales Bay may be transferred to another person for continued use in Tomales Bay upon payment of a transfer fee of one thousand dollars ($1,000) to be paid by the transferee.

(b) This section shall remain in effect only until April 1, 1997, and as of that date is repealed unless a later enacted statute which is enacted before April 1, 1997, deletes or extends that date.

CHAPTER 361

An act to add Section 7044.1 to the Business and Professions Code, relating to contractors.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 7044.1 is added to the Business and Professions Code, to read:

7044.1. This chapter does not apply to a real estate licensee acting within the course and scope of his or her license pursuant to the Real Estate Law (Part 1 (commencing with Section 10000) of Division 4). However, nothing in this section shall authorize a real estate licensee or a property manager to act in the capacity of a contractor unless licensed by the board.

CHAPTER 362

An act to amend Sections 7110 and 7159 of the Business and Professions Code, relating to contractors.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 7110 of the Business and Professions Code is amended to read:

7110. Willful or deliberate disregard and violation of the building laws of the state, or of any political subdivision thereof, or of the minimum painting standards adopted pursuant to Section 37040 of the Health and Safety Code, or of Section 8505 or 8556 of this code, or of Sections 1689.5 to 1689.8, inclusive, or Sections 1689.10 to 1689.13, inclusive, of the Civil Code, or of the safety laws or labor laws or compensation insurance laws or Unemployment Insurance Code of the state, or violation by any licensee of any provision of the Health and Safety Code or Water Code, relating to the digging, boring, or drilling of water wells, or Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code, constitutes a cause for disciplinary action.

SEC. 2. Section 7159 of the Business and Professions Code is amended to read:

7159. This section shall apply only to home improvement contracts, as defined in Section 7151.2, between a contractor, whether a general contractor or a specialty contractor, who is

licensed or subject to be licensed pursuant to this chapter with regard to the transaction and who contracts with an owner or tenant for work upon a residential building or structure, or upon land adjacent thereto, for proposed repairing, remodeling, altering, converting, modernizing, or adding to the residential building or structure or land adjacent thereto, and where the aggregate contract price specified in one or more improvement contracts, including all labor, services, and materials to be furnished by the contractor, exceeds five hundred dollars ($500).

Every home improvement contract and every contract the primary purpose of which is the construction of a swimming pool, shall be subject to the provisions of this section. Every contract and any changes in the contract subject to the provisions of this section shall be evidenced by a writing and shall be signed by all the parties to the contract thereto. The writing shall contain the following:

(a) The name, address, and license number of the contractor, and the name and registration number of any salesperson who solicited or negotiated the contract.

(b) The approximate dates when the work will begin and on which all construction is to be completed.

(c) A plan and scale drawing showing the shape, size dimensions, and construction and equipment specifications for a swimming pool and for other home improvements, a description of the work to be done and description of the materials to be used and the equipment to be used or installed, and the agreed consideration for the work.

(d) If the payment schedule contained in the contract provides for a downpayment to be paid to the contractor by the owner or the tenant before the commencement of work, the downpayment shall not exceed two hundred dollars ($200) or 2 percent of the contract price for swimming pools, or one thousand dollars ($1,000) or 10 percent of the contract price for other home improvements, excluding finance charges, whichever is the lesser.

(e) A schedule of payments showing the amount of each payment as a sum in dollars and cents. In no event shall the payment schedule provide for the contractor to receive, or shall the contractor actually receive, payments in excess of 100 percent of the value of the work performed on the project at any time, excluding finance charges, except that the contractor may receive an initial downpayment authorized by subdivision (d). With respect to a swimming pool contract, the final payment may be made at the completion of the final plastering phase of construction, provided that any installation or construction of equipment, decking, or fencing required by the contract is also completed. A failure by the contractor without lawful excuse to substantially commence work within 20 days of the approximate date specified in the contract when work will begin shall postpone the next succeeding payment to the contractor for that period of time equivalent to the time between when substantial commencement was to have occurred and when it did occur. The schedule of payments shall be stated in dollars and cents, and shall

be specifically referenced to the amount of work or services to be performed and to any materials and equipment to be supplied. With respect to a contract that provides for a schedule of monthly payments to be made by the owner or tenant and for a schedule of payments to be disbursed to the contractor by a person or entity to whom the contractor intends to assign the right to receive the owner's or tenant's monthly payments, the payments referred to in this subdivision mean the payments to be disbursed by the assignee and not those payments to be made by the owner or tenant.

(f) The contract shall state that upon satisfactory payment being made for any portion of the work performed, the contractor shall, prior to any further payment being made, furnish to the person contracting for the home improvement or swimming pool a full and unconditional release from any claim or mechanic's lien pursuant to Section 3114 of the Civil Code, for that portion of the work for which payment has been made.

(g) The requirements of subdivisions (d), (e), and (f) shall not apply when the contract provides for the contractor to furnish a performance and payment bond, lien and completion bond, bond equivalent, or joint control approved by the Registrar of Contractors covering full performance and completion of the contract and the bonds or joint control is or are furnished by the contractor, or when the parties agree for full payment to be made upon or for a schedule of payments to commence after satisfactory completion of the project. The contract shall contain in close proximity to the signatures of the owner and contractor a notice in at least 10-point type stating that the owner or tenant has the right to require the contractor to have a performance and payment bond.

(h) No extra or change-order work shall be required to be performed without prior written authorization of the person contracting for the construction of the home improvement or swimming pool. Any change-order forms for changes or extra work shall be incorporated in, and become a part of the contract.

(i) If the contract provides for a payment of a salesperson's commission out of the contract price, that payment shall be made on a pro rata basis in proportion to the schedule of payments made to the contractor by the disbursing party in accordance with subdivision (e).

(j) The language of the notice required pursuant to Section 7018.5.

(k) What constitutes substantial commencement of work pursuant to the contract.

(*l*) A notice that failure by the contractor without lawful excuse to substantially commence work within 20 days from the approximate date specified in the contract when work will begin is a violation of the Contractors' State License Law.

(m) If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control.

A failure by the contractor without lawful excuse to substantially

commence work within 20 days from the approximate date specified in the contract when work will begin is a violation of this section.

This section shall not be construed to prohibit the parties to a home improvement contract from agreeing to a contract or account subject to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

The writing may also contain other matters agreed to by the parties to the contract.

The writing shall be legible and shall be in a form that clearly describes any other document which is to be incorporated into the contract, and before any work is done, the owner shall be furnished a copy of the written agreement, signed by the contractor.

For purposes of this section, the board shall, by regulation, determine what constitutes "without lawful excuse."

The provisions of this section are not exclusive and do not relieve the contractor or any contract subject to it from compliance with all other applicable provisions of law.

A violation of this section by a licensee, or a person subject to be licensed, under this chapter, his or her agent, or salesperson is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) or by imprisonment in the county jail not exceeding one year, or by both fine and imprisonment.

Notwithstanding any other provision of law to the contrary, an indictment or information shall be brought, or a complaint filed, for a violation of this section, within three years from the effective date of the contract.

SEC. 3. Section 7159 of the Business and Professions Code is amended to read:

7159. This section shall apply only to home improvement contracts, as defined in Section 7151.2, between a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction and who contracts with an owner or tenant for work upon a residential building or structure, or upon land adjacent thereto, for proposed repairing, remodeling, altering, converting, modernizing, or adding to the residential building or structure or land adjacent thereto, and where the aggregate contract price specified in one or more improvement contracts, including all labor, services, and materials to be furnished by the contractor, exceeds five hundred dollars ($500).

Every home improvement contract and every contract the primary purpose of which is the construction of a swimming pool, shall be subject to the provisions of this section. Every contract and any changes in the contract subject to the provisions of this section shall be evidenced by a writing and shall be signed by all the parties to the contract thereto. The writing shall contain the following:

(a) The name, address, and license number of the contractor, and the name and registration number of any salesperson who solicited

or negotiated the contract.

(b) The approximate dates when the work will begin and on which all construction is to be completed.

(c) A plan and scale drawing showing the shape, size dimensions, and construction and equipment specifications for a swimming pool and for other home improvements, a description of the work to be done and description of the materials to be used and the equipment to be used or installed, and the agreed consideration for the work.

(d) If the payment schedule contained in the contract provides for a downpayment to be paid to the contractor by the owner or the tenant before the commencement of work, the downpayment shall not exceed two hundred dollars ($200) or 2 percent of the contract price for swimming pools, or one thousand dollars ($1,000) or 10 percent of the contract price for other home improvements, excluding finance charges, whichever is the lesser.

(e) A schedule of payments showing the amount of each payment as a sum in dollars and cents. In no event shall the payment schedule provide for the contractor to receive, or shall the contractor actually receive, payments in excess of 100 percent of the value of the work performed on the project at any time, excluding finance charges, except that the contractor may receive an initial downpayment authorized by subdivision (d). With respect to a swimming pool contract, the final payment may be made at the completion of the final plastering phase of construction, provided that any installation or construction of equipment, decking, or fencing required by the contract is also completed. A failure by the contractor without lawful excuse to substantially commence work within 20 days of the approximate date specified in the contract when work will begin shall postpone the next succeeding payment to the contractor for that period of time equivalent to the time between when substantial commencement was to have occurred and when it did occur. The schedule of payments shall be stated in dollars and cents, and shall be specifically referenced to the amount of work or services to be performed and to any materials and equipment to be supplied. With respect to a contract that provides for a schedule of monthly payments to be made by the owner or tenant and for a schedule of payments to be disbursed to the contractor by a person or entity to whom the contractor intends to assign the right to receive the owner's or tenant's monthly payments, the payments referred to in this subdivision mean the payments to be disbursed by the assignee and not those payments to be made by the owner or tenant.

(f) The contract shall state that upon satisfactory payment being made for any portion of the work performed, the contractor shall, prior to any further payment being made, furnish to the person contracting for the home improvement or swimming pool a full and unconditional release from any claim or mechanic's lien pursuant to Section 3114 of the Civil Code, for that portion of the work for which payment has been made.

(g) The requirements of subdivisions (d), (e), and (f) shall not

apply when the contract provides for the contractor to furnish a performance and payment bond, lien and completion bond, bond equivalent, or joint control approved by the Registrar of Contractors covering full performance and completion of the contract and the bonds or joint control is or are furnished by the contractor, or when the parties agree for full payment to be made upon or for a schedule of payments to commence after satisfactory completion of the project. The contract shall contain in close proximity to the signatures of the owner and contractor a notice in at least 10-point type stating that the owner or tenant has the right to require the contractor to have a performance and payment bond.

(h) No extra or change-order work shall be required to be performed without prior written authorization of the person contracting for the construction of the home improvement or swimming pool. Any change-order forms for changes or extra work shall be incorporated in, and become a part of the contract.

(i) If the contract provides for a payment of a salesperson's commission out of the contract price, that payment shall be made on a pro rata basis in proportion to the schedule of payments made to the contractor by the disbursing party in accordance with subdivision (e).

(j) The language of the notice required pursuant to Section 7018.5.

(k) What constitutes substantial commencement of work pursuant to the contract.

(*l*) A notice that failure by the contractor without lawful excuse to substantially commence work within 20 days from the approximate date specified in the contract when work will begin is a violation of the Contractors' State License Law.

(m) If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control.

A failure by the contractor without lawful excuse to substantially commence work within 20 days from the approximate date specified in the contract when work will begin is a violation of this section.

This section shall not be construed to prohibit the parties to a home improvement contract from agreeing to a contract or account subject to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

The writing may also contain other matters agreed to by the parties to the contract.

The writing shall be legible and shall be in a form that clearly describes any other document which is to be incorporated into the contract, and before any work is done, the owner shall be furnished a copy of the written agreement, signed by the contractor.

For purposes of this section, the board shall, by regulation, determine what constitutes "without lawful excuse."

The provisions of this section are not exclusive and do not relieve the contractor or any contract subject to it from compliance with all other applicable provisions of law.

A violation of this section by a licensee, or a person subject to be licensed, under this chapter, his or her agent, or salesperson is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(n) Any person who violates this section as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars ($500) nor more than twenty-five thousand dollars ($25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.

Notwithstanding any other provision of law to the contrary, an indictment or information shall be brought, or a complaint filed, for a violation of this section, within three years from the effective date of the contract.

SEC. 4. Section 3 of this bill incorporates amendments to Section 7159 of the Business and Professions Code proposed by both this bill and SB 634. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 7159 of the Business and Professions Code, and (3) this bill is enacted after SB 634, in which case Section 7159 of the Business and Professions Code, as amended by SB 634, shall remain operative only until the operative date of this bill, at which time Section 3 of this bill shall become operative, and Section 2 of this bill shall not become operative.

CHAPTER 363

An act to amend Section 54726 of the Education Code, relating to juveniles.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 54726 of the Education Code is amended to read:

54726. For school-based motivation and maintenance programs, the schoolsite council shall develop a school plan for increasing the retention rate of the school for all pupils with special emphasis on the needs of high-risk pupils. For schools establishing school-based motivation and maintenance programs, the plan shall include, but need not be limited to, all of the following:

(a) A staff development program for teachers, other school personnel, paraprofessionals, and volunteers, including those participating in special programs.

(b) Provisions for the utilization of the student study team process to identify and assess the needs of pupils who are dropouts or potential dropouts, and to develop programs to meet the needs of those pupils. Each student study team shall include all of the following:

(1) Students identified as dropouts or potential dropouts wherever appropriate.

(2) The pupil's parents or guardians.

(3) One of the pupil's teachers or, in the case of a school dropout, a teacher who would have provided instruction to the pupil if he or she were still attending school.

(4) The school principal or the principal's designee.

(5) Other appropriate resource teachers or specialists.

(6) Whenever appropriate, representatives of public or private community organizations, law enforcement agencies, or business and industry.

(c) Procedures for coordinating services from funding sources at the school level to assist pupils to participate successfully in the core academic curricula and specialized curricula related to jobs and career opportunities.

(d) Instructional and auxiliary services to meet the special needs of pupils identified as being at high risk of not succeeding in the regular school program or dropping out of school, non-English-speaking or limited-English-speaking pupils, including instruction in a language these pupils understand; educationally disadvantaged pupils; gifted and talented pupils; and pupils with exceptional needs.

(e) At the elementary school level, provisions for early identification and intervention to address learning problems including, but not limited to, the assessment of primary grade pupils to identify and commence remediation of developmental and other learning difficulties.

(f) An emphasis on literacy and basic skills development.

(g) An emphasis on curriculum content and teaching strategies that are relevant to job or career opportunities.

(h) A plan that integrates and coordinates the skills and talents of outreach consultants.

(i) Other activities and objectives established by the council.

(j) The proposed expenditure of funds available to the school through the programs described in Section 54723 and other available

funds.

(k) The schoolsite council shall consult with local officials, including officials from law enforcement and public health, and with representatives from nonprofit organizations that work with at-risk youth before making this proposal.

The schoolsite council shall annually review the school plan, establish a new budget, and, if necessary, make other modifications in the plan to reflect changing needs and priorities.

CHAPTER 364

An act to amend Section 47 of the Civil Code, relating to liability.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 47 of the Civil Code is amended to read:

47. A privileged publication or broadcast is one made:

(a) In the proper discharge of an official duty.

(b) In any (1) legislative or (2) judicial proceeding, or (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, except as follows:

(1) An allegation or averment contained in any pleading or affidavit filed in an action for marital dissolution or legal separation made of or concerning a person by or against whom no affirmative relief is prayed in the action shall not be a privileged publication or broadcast as to the person making the allegation or averment within the meaning of this section unless the pleading is verified or affidavit sworn to, and is made without malice, by one having reasonable and probable cause for believing the truth of the allegation or averment and unless the allegation or averment is material and relevant to the issues in the action.

(2) This subdivision does not make privileged any communication made in furtherance of an act of intentional destruction or alteration of physical evidence undertaken for the purpose of depriving a party to litigation of the use of that evidence, whether or not the content of the communication is the subject of a subsequent publication or broadcast which is privileged pursuant to this section. As used in this paragraph, "physical evidence" means evidence specified in Section 250 of the Evidence Code or evidence that is property of any type specified in Section 2031 of the Code of Civil Procedure.

(3) A recorded lis pendens is not a privileged publication unless it identifies an action previously filed with a court of competent jurisdiction which affects the title or right of possession of real

property, as authorized or required by law.

(c) In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information. This subdivision applies to and includes a communication concerning the job performance or qualifications of an applicant for employment, based upon credible evidence, made without malice, by a current or former employer of the applicant to, and upon request of, the prospective employer. This subdivision shall not apply to a communication concerning the speech or activities of an applicant for employment if the speech or activities are constitutionally protected, or otherwise protected by Section 527.3 of the Code of Civil Procedure or any other provision of law.

(d) By a fair and true report in a public journal, of (1) a judicial, (2) legislative, or (3) other public official proceeding, or (4) of anything said in the course thereof, or (5) of a verified charge or complaint made by any person to a public official, upon which complaint a warrant has been issued.

(e) By a fair and true report of (1) the proceedings of a public meeting, if the meeting was lawfully convened for a lawful purpose and open to the public, or (2) the publication of the matter complained of was for the public benefit.

CHAPTER 365

An act to add Section 1684 to the Business and Professions Code, relating to dentistry.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 1684 is added to the Business and Professions Code, to read:

1684. In addition to other acts constituting unprofessional conduct under this chapter, it is unprofessional conduct for a person licensed under this chapter to perform, or hold himself or herself out as able to perform, professional services beyond the scope of his or her license and field or fields of competence as established by his or her education, experience, training, or any combination thereof. This includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental profession.

This section shall not apply to research conducted by accredited dental schools or colleges, or to research conducted pursuant to an

investigational device exemption issued by the United States Food and Drug Administration.

CHAPTER 366

An act to amend Sections 10631 and 10632 of the Water Code, relating to water.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 10631 of the Water Code is amended to read:

10631. A plan shall be adopted in accordance with this chapter and shall do all of the following:

(a) Include an estimate of past, current, and projected potable and recycled water use and, to the extent records are available, segregate those uses between residential, industrial, commercial, and governmental uses.

(b) (1) Identify conservation and reclamation measures currently adopted and being practiced.

(2) Urban water suppliers that are members of the California Urban Water Conservation Council and submit annual reports to that council in accordance with the "Memorandum of Understanding Regarding Urban Water Conservation in California," dated September 1991, may submit the annual reports for the purposes of identifying conservation measures as required by paragraph (1).

(c) Describe alternative conservation measures, including, but not limited to, consumer education, metering, water saving fixtures and appliances, pool covers, lawn and garden irrigation techniques, and low water use landscaping, that would improve the efficiency of water use with an evaluation of their costs and their environmental and other significant impacts.

(d) Provide a schedule of implementation for proposed actions as indicated by the plan.

(e) Provide an urban water shortage contingency plan that includes all of the following elements that are within the authority of the urban water supplier:

(1) Past, current, and projected water use and, to the extent records are available, a breakdown of those uses on the basis of single-family residential, multifamily residential, commercial, industrial, governmental, and agricultural use.

(2) An estimate of the minimum water supply available at the end of 12, 24, and 36 months, assuming the worst case water supply shortages.

(3) Stages of action to be undertaken by the urban water supplier in response to water supply shortages, including up to a 50 percent reduction in water supply, and an outline of specific water supply conditions that are applicable to each stage.

(4) Mandatory provisions to reduce water use that include prohibitions against specific wasteful practices, such as gutter flooding.

(5) Consumption limits in the most restrictive stages. Each urban water supplier may use any type of consumption limit in its water shortage contingency plan that would reduce water use and is appropriate for its area. Examples of consumption limits that may be used include, but are not limited to, percentage reductions in water allotments, per capita allocations, an increasing block rate schedule for high usage of water with incentives for conservation, or restrictions on specific uses.

(6) Penalties or charges for excessive use.

(7) An analysis of the impacts of the plan on the revenues and expenditures of the urban water supplier, and proposed measures to overcome those impacts, such as the development of reserves and rate adjustments.

(8) A draft water shortage contingency resolution or ordinance to carry out the urban water shortage contingency plan.

(9) A mechanism for determining actual reductions in water use pursuant to the urban water shortage contingency plan.

(f) Describe the frequency and magnitude of supply deficiencies, based on available historic data and future projected conditions comparing water supply and demand, including a description of deficiencies in time of drought and emergency and the ability to meet deficiencies.

(g) To the extent feasible, describe the method which will be used to evaluate the effectiveness of each conservation measure implemented under the plan.

(h) Describe the steps which would be necessary to implement any proposed actions in the plan.

(i) Describe findings, actions, and planning relating to all of the following:

(1) The use of internal and external water audits for single-family residential, multifamily residential, institutional, commercial, industrial, and governmental customers, and the use of incentive programs to encourage customer audits and program participation.

(2) The use of distribution system water audits.

(3) Leak detection and repair.

(4) The use of large landscape water audits.

(j) Describe actions and planning to eliminate the use of once-through cooling systems, nonrecirculating water systems, and nonrecycling decorative water fountains, and to encourage the recirculation of water if proper public health and safety standards are maintained.

(k) Describe actions and plans to enforce conservation measures.

(*l*) To the extent feasible, describe the amount of water saved through water conservation measures employed by user groups.

(m) Describe actions and planning to ensure the involvement of community members within the service area with regard to water management planning.

SEC. 2. Section 10632 of the Water Code is amended to read:

10632. (a) In addition to the elements required pursuant to Section 10631, a plan projecting a future use which indicates a need for expanded or additional water supplies shall be adopted in accordance with this chapter and shall include an evaluation of the following alternatives:

(1) Recycled water. The plan's evaluation of this alternative shall provide information on recycled water and its potential for use as a water source in the service area of the urban water supplier and shall include all of the following information:

(A) A description of the waste water collection and treatment systems in the supplier's service area, including a quantification of the amount of waste water collected and treated and the methods of waste water disposal.

(B) A description of the recycled water currently being used in the supplier's service area, including, but not limited to, the type, place, and quantity of use.

(C) A description and quantification of the potential uses of recycled water, including, but not limited to, agricultural irrigation, landscape irrigation, wildlife habitat enhancement, wetlands, industrial reuse, groundwater recharge, and other appropriate uses, and a determination with regard to the technical and economic feasibility of serving those uses.

(D) The projected use of recycled water within the supplier's service area at the end of 5, 10, 15, and 20 years.

(E) A description of actions, including financial incentives, which may be taken to encourage the use of recycled water where fresh water is not necessary, and the projected results of these actions in terms of acre-feet of recycled water used per year.

(F) A plan for optimizing the use of recycled water in the supplier's service area, including actions to facilitate the installation of dual distribution systems and to promote recirculating uses.

(2) Exchanges or transfer of water on a short-term or long-term basis.

(3) Management of water system pressures and peak demands.

(4) Issues relevant to meter retrofitting for all uses.

(5) Incentives to alter water use practices, including fixture and appliance retrofit programs.

(6) Public information and educational programs to promote wise use and eliminate waste.

(7) Changes in pricing, rate structures, and regulations.

(b) The preparation of the plan shall be coordinated with local water, waste water, and planning agencies.

CHAPTER 367

An act to amend Section 23305.1 of, and to add Article 8 (commencing with Section 19191) to Chapter 4 of Part 10.2 of Division 2 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. (a) The Legislature finds and declares that it is in the general public interest that all business entities present and active within this state be lawfully registered with the appropriate authorized public agencies.

(b) The Legislature further finds and declares all of the following:

(1) The tax laws of this state should be administered in a manner that encourages, facilitates, and places a premium on voluntary compliance by all taxpayers who are subject to those laws.

(2) The collection of state taxes from all taxpayers who are required to pay those taxes is of vital importance to the citizens of this state.

(3) The expansion of the number of taxpayers who conduct business in this state and pay taxes to this state on that business activity reduces the tax burden for all citizens of this state.

(4) An increase in the state revenues collected in accordance with the tax laws of this state contributes to the public welfare by increasing revenues available to the state to use in the discharge of its various functions.

(5) Voluntary compliance with the tax laws of this state by business entities spares the state the administrative expense of enforcing compliance through involuntary means.

(6) The reasons for a business entity's past noncompliance with state business registration and franchise or income tax laws vary and sometimes the entity may be less culpable due to reasonable and understandable causes, particularly when the determination of a multistate business' obligations to the various states may be subtle and complex.

(7) A state tax policy that encourages good faith efforts by business entities to voluntarily come forward to disclose and pay past tax liabilities, that distinguishes between voluntary and recalcitrant taxpayers, and that only imposes penalties that are commensurate with actions and intent, results in an overall benefit for the state.

(8) A policy that imposes financial and reporting burdens on businesses for past omissions that threaten the future continuance of business activity or discourages business expansion in this state is ultimately harmful to the state's economy.

(9) A program that extends some measure of relief from the

potential for tax liabilities and penalties accrued over an unlimited period in the past will result in the gain of future revenues in the form of taxes paid by business entities who are encouraged to come forward.

SEC. 2. Article 8 (commencing with Section 19191) is added to Chapter 4 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 8. Voluntary Disclosure Program For Business Entities

19191. (a) The Franchise Tax Board may enter into a voluntary disclosure agreement with any qualified business entity, as defined in Section 19192, that is binding on both the Franchise Tax Board and the qualified business entity.

(b) The Franchise Tax Board shall do all of the following:

(1) Provide guidelines and establish procedures for business entities to apply for voluntary disclosure agreements.

(2) Accept applications on an anonymous basis from business entities for voluntary disclosure agreements.

(3) Implement procedures for accepting applications for voluntary disclosure agreements through the National Nexus Program administered by the Multistate Tax Commission.

(4) For purposes of considering offers from business entities to enter into voluntary disclosure agreements, take into account the following criteria:

(A) The nature and magnitude of the business entity's previous presence and activity in this state and the facts and circumstances by which the nexus of the business entity was established.

(B) The extent to which the weight of the factual circumstances demonstrates that a prudent business person exercising reasonable care would conclude that the previous activities and presence in this state were or were not immune from taxation by this state by reason of Public Law 86-272 or otherwise.

(C) Reliance on the advice of a person in a fiduciary position or other competent advice that the business entity's activities were immune from taxation by this state.

(D) Lack of evidence of willful disregard or neglect of the tax laws of this state on the part of the business entity.

(E) Demonstrations of good faith on the part of the business entity.

(F) Benefits that will accrue to the state by entering into a voluntary disclosure agreement.

(5) Act on any application of a voluntary disclosure agreement within 120 days of receipt.

(6) Enter into voluntary disclosure agreements with qualified business entities, as authorized in subdivision (a) and based on the criteria set forth in paragraph (4).

(c) Before any voluntary disclosure agreement becomes binding, the Franchise Tax Board, itself, shall approve the agreement in the

following manner:

(1) The Executive Officer and Chief Counsel of the Franchise Tax Board shall recommend and submit the voluntary disclosure agreement to the Franchise Tax Board for approval.

(2) Each voluntary disclosure agreement recommendation shall be submitted in a manner as to maintain the anonymity of the taxpayer applying for the voluntary disclosure agreement.

(3) Any recommendation for approval of a voluntary disclosure agreement shall be approved or disapproved by the Franchise Tax Board, itself, within 45 days of the submission of that recommendation to the board.

(4) Any recommendation of a voluntary disclosure agreement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved.

(5) Disapproval of a recommendation of a voluntary disclosure agreement shall be made only by a majority vote of the Franchise Tax Board.

(6) The members of the Franchise Tax Board shall not participate in any voluntary disclosure agreement except as provided in this subdivision.

(d) The voluntary disclosure agreement entered into by the Franchise Tax Board and the qualified business entity as provided for in subdivision (a) shall to the extent applicable specify that:

(1) The Franchise Tax Board shall:

(A) Waive its authority under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001), with respect to the qualified business entity, to assess or propose to assess taxes, additions to tax, fees, or penalties with respect to each taxable or income year ending prior to six years from the signing date of the voluntary disclosure agreement.

(B) With respect to each of the six taxable or income years ending immediately preceding the signing date of the voluntary disclosure agreement, based on its discretion, agree to waive any or all of the following:

(i) Any penalty related to a failure to make and file a return, as provided in Section 19131.

(ii) Any penalty related to a failure to pay any amount due by the date prescribed for payment, as provided in Section 19132.

(iii) Any addition to tax related to an underpayment of estimated tax, as provided in Section 19136.

(iv) Any penalty related to Section 6810 or subdivision (a) of Section 8810 of the Corporations Code, as provided in Section 19141.

(v) Any penalty related to a failure to furnish information or maintain records, as provided in Section 19141.5.

(vi) Any addition to tax related to an underpayment of tax imposed under Part 11 (commencing with Section 23001), as provided in Section 19142.

(vii) Any penalty related to a partnership required to file a return

under Section 18633, as provided in Section 19172.

(viii) Any penalty related to a failure to file information returns, as provided in Section 19183.

(ix) Any penalty related to relief from contract voidability, as provided in Section 23305.1.

(2) The qualified business entity shall:

(A) With respect to each of the six taxable or income years ending immediately preceding the signing date of the written agreement:

(i) Voluntarily and fully disclose all material facts pertinent to the business entity's liability for any taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(ii) Except as provided in clause (iii), within 30 days from the signing date of the voluntary disclosure agreement:

(I) File all returns required under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(II) Pay in full any tax, interest, and penalties (other than those penalties specifically waived by the Franchise Tax Board under the terms of the voluntary disclosure agreement) imposed under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) in a manner as may be prescribed by the Franchise Tax Board.

(iii) The Franchise Tax Board may extend the time for filing returns and paying amounts due to 120 days from the signing date of the voluntary disclosure agreement.

(B) Agree to comply with all franchise and income tax laws of this state in subsequent income or taxable years by filing all returns required and paying all amounts due under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

19192. For purposes of this article:

(a) (1) "Qualified business entity" means an entity that is all of the following:

(A) An entity that is any of the following:

(i) A corporation, as defined in Section 23038.

(ii) A bank, as defined in Section 23039.

(B) A business entity, including any predecessors to the business entity, that previously has never filed a return with the Franchise Tax Board pursuant to this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23011).

(C) A business entity, including any predecessors to the business entity, that previously has not been the subject of an inquiry by the Franchise Tax Board with respect to liability for any of the taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(D) A business entity that voluntarily comes forward prior to any unilateral contact from the Franchise Tax Board, makes application for a voluntary disclosure agreement in a form and manner prescribed by the Franchise Tax Board, and makes a full and

accurate statement of its activities in this state for the six immediately preceding taxable or income years.

(2) (A) Notwithstanding paragraph (1), a qualified business entity does not include any of the following:

(i) A business entity that is organized and existing under the laws of this state.

(ii) A business entity that is qualified or registered with the office of the Secretary of State.

(iii) A business entity that maintains and staffs a permanent facility in this state.

(B) For purposes of this paragraph, the storing of materials, goods, or products in a public warehouse pursuant to a public warehouse contract does not constitute maintaining a permanent facility in this state.

(b) "Signing date" of the voluntary disclosure agreement means the date on which a person duly authorized by the Franchise Tax Board signs the agreement.

19193. Nothing in this article shall be construed to mean that by accepting and signing a voluntary disclosure agreement the Franchise Tax Board abdicates the right and authority to examine returns and determine the correct amount of tax for any of the taxable or income years covered by the voluntary disclosure period agreed upon and to assess any additional tax, penalty, or interest owed as a result of that examination.

19194. (a) Notwithstanding any other provision of this article, a voluntary disclosure agreement shall be null and void in the event that the Franchise Tax Board finds that with respect to the agreement any of the following circumstances exist:

(1) The qualified business entity has misrepresented any material fact in applying for the voluntary disclosure agreement or in entering into the agreement.

(2) The qualified business entity fails to file any returns for any taxable or income year covered by the voluntary disclosure period agreed upon on or before the due date prescribed under the terms of the agreement in accordance with paragraph (2) of subdivision (d) of Section 19191.

(3) (A) The qualified business entity fails to pay in full any tax, penalty, or interest due within the time prescribed under the terms of the voluntary disclosure agreement in accordance with paragraph (2) of subdivision (d) of Section 19191 or to pay any installments thereof due within the time prescribed under the terms of an installment payment arrangement in accordance with subparagraph (B).

(B) The Franchise Tax Board may enter into an installment payment arrangement, which shall include provisions for interest, in lieu of the full payment required under paragraph (2) of subdivision (d) of Section 19191. Failure by the qualified business entity to comply with the terms of the installment payment arrangement shall also render the voluntary disclosure arrangement null and void.

(4) The tax shown by the qualified business entity on its tax return filed for any taxable or income year covered by the voluntary disclosure agreement, including any amount shown on a qualified amended return, as defined in Section 1.6664-2(c)(3) of Title 26 of the Code of Federal Regulations, understates by 10 percent or more the tax imposed under either Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) and the qualified business cannot demonstrate to the satisfaction of the Franchise Tax Board that a good-faith effort was made to accurately compute the tax.

(5) The qualified taxpayer fails to begin to prospectively comply with all franchise and income tax laws of this state as agreed upon under the terms of the voluntary disclosure agreement in accordance with paragraph (2) of subdivision (d) of Section 19191.

(b) In the event that the Franchise Tax Board finds that the qualified business entity has failed to comply under any of the circumstances which render the voluntary disclosure agreement null and void as set forth in subdivision (a), the limitation on assessment for any taxable or income years and the waiver of any penalties as provided for in paragraph (1) of subdivision (d) of Section 19191 shall not be binding on the Franchise Tax Board.

SEC. 3. Section 23305.1 of the Revenue and Taxation Code is amended to read:

23305.1. (a) A taxpayer may make application to the Franchise Tax Board for relief from the voidability provisions of Section 23304.1. To be relieved from voidability, the taxpayer shall do all of the following:

(1) Provide the Franchise Tax Board with an application for relief from contract voidability in a form and manner prescribed by the Franchise Tax Board.

(2) Include on the application the period for which relief is requested in accordance with subdivision (b).

(3) File any tax returns required to be filed under this part with the Franchise Tax Board, including returns for the period for which relief is requested.

(4) Pay any tax, additions to tax, penalties, interest, and any other amounts owing to the Franchise Tax Board, including any liability attributable to the period for which relief is requested.

(5) Pay any penalty imposed under subdivision (b) for the period for which relief is requested.

(6) In the case of a taxpayer that applies for and enters into an approved voluntary disclosure agreement in accordance with Article 8 (commencing with Section 19191) of Chapter 4 of Part 10.2, for purposes of this section, the taxpayer shall be considered to have met the requirements of paragraphs (3), (4), and (5) if the taxpayer fulfills to the satisfaction of the Franchise Tax Board all the specifications of the voluntary disclosure agreement within the meaning of paragraph (2) of subdivision (d) of Section 19191 and if the Franchise Tax Board has not found that any of the circumstances

described in Section 19194 has rendered the voluntary disclosure agreement null and void.

(b) (1) Except as provided in paragraph (2), both of the following shall apply:

(A) The period for which relief is requested shall begin on the date that one of the taxpayer's income years begins and ends on the date that relief is granted.

(B) The Franchise Tax Board shall assess a daily penalty equal to one hundred dollars ($100) for each day of the period for which relief from voidability is granted, but not to exceed a total penalty equal to the amount of the tax for the period for which relief is requested.

(2) If an application for relief from voidability is filed for a period in which an application for revivor has been filed and the certificate of revivor has been issued, all of the following shall apply:

(A) The period for which relief is requested shall begin on the date the taxpayer's powers, rights, and privileges had been suspended or forfeited and ends on the date relief is granted.

(B) The Franchise Tax Board shall assess a daily penalty equal to one hundred dollars ($100) for each day of the period for which relief from voidability is granted, but not to exceed a total penalty equal to that amount of the tax that would be imposed under Section 23151 and, except as provided in subparagraph (C), that penalty shall be equal to no less than the amount of the minimum tax provided under Section 23153 for the period for which relief is requested.

(C) In the case of an exempt organization or trust subject to Article 2 (commencing with Section 23731) of Chapter 4 (the tax on unrelated business taxable income), the daily penalty provided in subparagraph (B) shall not exceed a total penalty equal to the amount of tax imposed upon its unrelated business taxable income for the period for which relief is requested.

(3) Any penalty imposed under this subdivision shall, subject to Section 23305.2, be due and payable on demand by the Franchise Tax Board.

(c) (1) Upon satisfaction of the conditions specified in subdivision (a), including through the application of Section 23305.2, the following shall apply:

(A) All contracts entered into during the period for which relief is granted that have not been rescinded by a final court order pursuant to Section 23304.5 may be enforced in the same manner and to the same extent, with regard to both the parties to the contract and any third parties, as if the contract had never been voidable.

(B) Any sale, transfer, or exchange of real property in California during the period for which relief is granted and which the taxpayer at that time was not entitled to sell, transfer, or exchange by reason of subdivision (d) of Section 23302 and which has not been rescinded by a final court order pursuant to Section 23304.5, shall be as valid as if the taxpayer had not been subject to subdivision (d) of Section 23302 at the time of the sale, transfer, or exchange.

(2) Upon being granted relief from voidability, the Franchise Tax

Board shall certify that relief to the taxpayer in a form and manner as prescribed by the Franchise Tax Board. The certificate shall be issued or mailed to the taxpayer, or as directed by the taxpayer, and shall indicate the period for which relief is granted.

(d) The fact that a certificate of relief from voidability was issued pursuant to this section and the information contained on that certificate shall be subject to public disclosure. The certificate shall be prima facie evidence of the relief from voidability for contracts entered into during the period of relief stated on the certificate and the certificate may be recorded in the office of the county recorder of any county of this state.

(e) Subject to limitations set forth in Section 17 of Chapter 926 of the Statutes of 1990, a taxpayer that received a certificate of revivor between January 1, 1990, and January 1, 1991, may apply for relief from voidability under this section.

SEC. 4. The Franchise Tax Board shall conduct a study of the effectiveness of the voluntary disclosure program evaluating the benefits accruing to the state as a result of the program and shall report the results of the study to the Legislature on or before January 1, 1998. The Legislative Analyst's Office shall review the Franchise Tax Board's study of the voluntary disclosure program and include their findings in the Budget Bill analysis for the 1999-2000 fiscal year.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 368

An act to amend Section 1218 of the Code of Civil Procedure, relating to contempt.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 1218 of the Code of Civil Procedure is amended to read:

1218. (a) Upon the answer and evidence taken, the court or judge must determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he or she is guilty of the contempt, a fine may be imposed on him or her not exceeding one thousand dollars ($1,000), or he or she may be imprisoned not exceeding five days, or both. In addition, a person who is subject to a court order as a party to the action, or any agent of this person, who is adjudged guilty of contempt for violating that court order may be ordered to pay to the party initiating the contempt proceeding the reasonable attorney's fees and costs incurred by this party in connection with the contempt proceeding.

(b) No party, who is in contempt of a court order or judgment in a dissolution of marriage or legal separation action, shall be permitted to enforce such an order or judgment, by way of execution or otherwise, either in the same action or by way of a separate action, against the other party. This restriction shall not affect nor apply to the enforcement of child or spousal support orders.

(c) In any court action in which a party is found in contempt of court for failure to comply with a court order pursuant to the Family Code, or Sections 11350 to 11476.1, inclusive, of the Welfare and Institutions Code, the court shall order the following:

(1) Upon a first finding of contempt, the court shall order the contemner to perform community service of up to 120 hours, in lieu of imprisonment of up to 120 hours, for each count of contempt.

(2) Upon the second finding of contempt, the court shall order the contemner to perform community service of up to 120 hours, in addition to ordering imprisonment of the contemner up to 120 hours or the payment of a fine of up to one thousand dollars ($1,000), or both such imprisonment and fine, for each count of contempt.

(3) Upon the third or any subsequent finding of contempt, the court shall order both of the following:

(A) The court shall order the contemner to serve a term of imprisonment of up to 240 hours, and to pay a fine of one thousand dollars ($1,000) or perform community service of up to 240 hours, or both such fine and community service, for each count of contempt.

(B) The court shall order the contemner to pay an administrative fee, not to exceed the actual cost of the contemner's administration and supervision, while assigned to a community service program pursuant to this paragraph.

(4) The court shall take parties' employment schedules into consideration when ordering either community service or imprisonment, or both.

CHAPTER 369

An act to amend Sections 6590, 6595, and 6596 of the Fish and Game Code, relating to fish.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 6590 of the Fish and Game Code is amended to read:

6590. The Legislature finds and declares all of the following:

(a) Substantial declines in various species of desirable fish that are caught in southern California ocean waters have adversely affected recreational and commercial fishing and their related industries.

(b) Research and development of artificial propagation, rearing, and stocking techniques and equipment have been sufficiently developed. The purpose of this article is to determine if hatchery-released fish can artificially enhance certain stocks of various desirable species, through increased hatchery production of fish and increased monitoring of fisheries to assess the contribution of hatchery-released fish to that enhancement.

(c) Funding for research pertaining to enhancement and artificial propagation, rearing, and stocking are most appropriately borne by a special fund derived from user fees on recreational and commercial fishermen who stand to directly benefit from the resurgence of depressed marine fisheries.

(d) The department has continuing resource management, administrative, and policy review responsibility in marine resources issues.

(e) Volunteers from the recreational fishing community have developed and operated grow-out facilities with private funding. These volunteer activities greatly enhance the effectiveness of the program and are fully compatible with the overall program objectives.

(f) As white sea bass hatchery production is established, additional grow-out facilities will be required and coordination between these facilities will be necessary. The ocean resources enhancement advisory panel may encourage contracts to carry out coordination activities and recommend to the director that this coordination remain a high priority. Those coordination activities may be funded with fees collected by the department pursuant to this article.

(g) The use of federal matching funds, including sportfish restoration account funds, shall be a high priority for use to match state dollars for this program.

SEC. 2. Section 6595 of the Fish and Game Code is amended to read:

6595. (a) All fees collected by the department pursuant to this article, and any interest earned on those fees, shall be deposited in the Fish and Game Preservation Fund and shall be available, upon appropriation by the Legislature, solely for purposes of the program. The department shall maintain the internal accountability necessary to ensure that expenditures of these funds meet the requirements and restrictions of the purposes of the program.

(b) An amount, not to exceed 15 percent of the total annual revenues deposited in the fund pursuant to this article, may be appropriated for the administration of the program, including any reasonable and necessary expenses incurred by members of the ocean resources enhancement advisory panel in the discharge of their duties pursuant to this article.

(c) No part of the program may be financed pursuant to this article unless it has been approved by both the director and a majority of the members of the ocean resources enhancement advisory panel.

SEC. 3. Section 6596 of the Fish and Game Code is amended to read:

6596. (a) In addition to a valid California fishing license issued pursuant to Section 7149 and any applicable license stamp issued pursuant to this code, a person taking fish from ocean waters south of a line extending due west from Point Arguello for sport purposes shall have permanently affixed to his or her fishing license an ocean fishing enhancement stamp. A license stamp issued under this subdivision shall be issued for the following fees:

(1) A stamp for an annual sportfishing or sport ocean fishing license, a fee of two dollars and fifty cents ($2.50).

(2) A stamp for each single day sportfishing or sport ocean fin fishing license, a fee of fifty cents ($0.50).

(b) In addition to a valid California commercial passenger fishing boat license issued pursuant to Section 7920, the owner of any boat or vessel who, for profit, permits any person to fish therefrom, south of a line extending due west from Point Arguello, shall obtain and permanently affix to the license a commercial ocean fishing enhancement stamp which may be obtained from the department upon payment of a fee of twenty-five dollars ($25).

(c) In addition to a valid California commercial fishing license issued pursuant to Section 7852, a person who lands, or causes to be brought ashore, any white sea bass, south of a line extending due west from Point Arguello, shall obtain and permanently affix to the commercial fishing license a commercial ocean fishing enhancement stamp which may be obtained from the department upon payment of a fee of twenty-five dollars ($25).

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 370

An act to amend and renumber Section 25244.1101 of the Health and Safety Code, relating to hazardous waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 25244.1101 of the Health and Safety Code is amended and renumbered to read:

25244.11.5. (a) The department shall, to the extent that meritorious applications are received, and to the extent that funds are available, as determined by the department, provide grants to local government agency hazardous waste reduction programs to assist businesses in the establishment of effective hazardous waste reduction practices. The grants shall be used for all of the following purposes:

(1) Identification of the most significant hazardous waste streams in the local government agency's jurisdiction and the businesses that produce them.

(2) Education of governmental agencies, community and industry groups, and individual businesses concerning the concepts of hazardous waste reduction, including, but not limited to, process modifications, raw material substitution, recycling, treatment options, and housekeeping methods.

(3) Dissemination of information on best demonstrated available hazardous waste reduction, recycling, and treatment technologies to businesses through workshops and educational materials.

(4) Waste stream-specific and process-specific waste reduction audits of businesses in the jurisdiction of the local government agency.

(5) Other innovative methods to bring hazardous waste reduction techniques and practices to the attention of businesses in the jurisdiction of the local government agency, including the use of technical consulting services for businesses of small and medium size.

(b) A grant made by the department to a local government agency shall not exceed fifty thousand dollars ($50,000) per year, and the total amount of grants awarded by the department each year pursuant to this section shall not exceed two hundred fifty thousand dollars ($250,000).

(c) In awarding grants to local government agencies pursuant to this section, the department shall give preference to local government agencies which offer matching funds to the grant funds.

(d) It is the intent of the Legislature that funding for grants pursuant to this section shall be provided from funds made available for the purposes of this article.

(e) This section shall become inoperative on July 1, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to continue the provision of grants to local government agencies for the purpose of local hazardous waste reduction programs, thereby protecting public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 371

An act to amend Section 50712.5 of, and to add Section 50710.1 to, the Health and Safety Code, relating to housing.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 50710.1 is added to the Health and Safety Code, to read:

50710.1. (a) If all the development costs of any migrant farm labor center assisted pursuant to this chapter are provided by federal, state, or local grants, and if inadequate funds are available from any federal, state, or local service to write-down operating costs, the department may approve rents for that center which are in excess of rents charged in other centers assisted by the Office of Migrant Services. However, prior to approving these rents, the department shall consider the adequacy of evidence presented by the entity operating the center that the rents reimburse actual, reasonable, and necessary costs of operation.

(b) At the end of each fiscal year, any entity operating a migrant farm labor center pursuant to this chapter may establish a reserve account comprised of the excess funds provided through the annual operating contract received from the department, if the department certifies there is no need to address reasonable general maintenance requirements or repairs, rehabilitation, and replacement needs of the requesting migrant farm labor center which affect the immediate health and safety of residents. The cumulative balance of the reserve account shall not exceed 10 percent of the annual operating funds annually committed to the entity by the department. Funds in the reserve account shall be used only for capital improvements such as replacing or repairing structural elements, furniture, fixtures, or equipment of the migrant farm labor

center, the replacement or repair of which are reasonably required to preserve the migrant farm labor center. Withdrawals from the reserve account shall be made only upon the written approval of the department of the amount and nature of expenditures.

(c) A migrant farm labor center governed by this chapter may be operated for an extended period beyond 180 days, provided that all of the following conditions are satisfied:

(1) No additional subsidies provided by the department are used for the operation or administration of the migrant farm center during the extended period.

(2) Rents are not to be increased above the rents charged during the period immediately prior to the extension unless the department finds that an increase is necessary to cover reasonable operating costs and the housing authority certifies that it has made a good faith effort to obtain additional sources of funds to cover these costs, such as contributions from agricultural employers or other federal, local, or private sources.

(3) In no event shall the rent exceed the average daily operating cost of the center, less any subsidy funds found to be available pursuant to paragraph (2), provided that at least one-third of the residents of the center who will remain in residency during an extension have petitioned to keep the center open for an extended period at rents which are the same or higher than rents during the regular period of occupancy. The Legislature finds and declares that because the number of residents may be substantially reduced during the extension period, a rent increase may be necessary to cover operating costs. It is the intent of the Legislature that the public sector, private sector, and farmworkers each play an important role in ensuring the financial viability of this important source of needed housing.

(4) An extension is requested by an entity operating the migrant farm labor center, and occupancy will be limited to migrant farmworkers and their families who resided at a migrant center during the regular period of occupancy. Before granting an extension, the housing authority shall take into consideration the structural condition of the center, the climate, and other factors affecting the health and safety of migrant farmworkers and their families.

(5) The extension is deemed necessary and approved by the department for the health and safety of agricultural workers.

(6) The occupancy during the extended season represents a new tenancy and is not subject to existing and statutory and regulatory limitations governing rents. Prior to the beginning of the extension period, residents shall be provided at least two days' advance written notice of any rent increase and of the expected length of the extension, including the date of closure of the center.

SEC. 2. Section 50712.5 of the Health and Safety Code is amended to read:

50712.5. (a) The Department of Housing and Community

Development, through its Office of Migrant Services, pursuant to the authority granted in subdivision (n) of Section 50406 and this chapter shall assist in the development, construction, reconstruction, rehabilitation, or operation of migrant farm labor centers. The department shall encourage and assist in the development of family units, or dormitory-style units, as may be appropriate, in migrant farm labor centers in any county or counties where there is a substantial unmet need for migrant farmworker housing. It is the intent of the Legislature in permitting the development of dormitory-style housing that family households not be mixed with single person households unless the contractor or sponsor can make reasonable accommodations to provide separate living and sleeping areas in the dormitory to those family households.

(b) The department may use funds appropriated for the purposes of the Office of Migrant Services to maximize the utility of any other local, federal, state, or private funds or other assistance made available for the purposes of this section. These appropriated funds may be used for costs including, but not limited to, the following items:

(1) Predevelopment costs incurred in the process of securing construction or long-term financing site acquisition development, architectural, engineering, or legal expenses, or construction costs, including construction interest, or both. These costs shall not be subject to reimbursement from construction or permanent financing, as the case may be, if the reimbursement would contribute to, or result in, rents substantially in excess of those in other migrant farm labor centers assisted by the Office of Migrant Services, as determined by the department.

(2) A grant or deferred payment loan for acquisition, development, and related infrastructure costs, including construction, reconstruction, rehabilitation, or operation, which may be forgiven, matching or supplementing the permanent financing or grant made available by a federal, state, or local housing assistance program.

(3) Operating cost reductions to the extent necessary to ensure that the rents in the migrant farm center are not substantially in excess of those in other migrant farm labor centers operated by the Office of Migrant Services.

(c) The department shall seek the maximum possible contribution of funds, land, and other incentives from local, federal, state, and private sources for all the purposes described in subdivision (b). Funds transferred pursuant to Part 8 (commencing with Section 53130) shall not be used in a manner inconsistent with this part.

(d) To the extent that any migrant farm labor center assisted pursuant to this section is financed or otherwise assisted by the United States Farmers Home Administration, and to the extent the Farmers Home Administration requires compliance with construction, operating, term of use, or residency standards which

differ from those required by the department pursuant to regulations adopted to implement and interpret this chapter, those Farmers Home Administration standards shall supersede the department's regulations.

(e) The Office of Migrant Services may authorize the use of dormitory-style housing in a migrant farm labor center.

CHAPTER 372

An act to amend Sections 699.5, 975.5, 987.61, 987.71, 987.86, and 1038.5 of, and to repeal Sections 897, 987.567, 987.861, 987.93, and 987.94 of, the Military and Veterans Code, relating to veterans.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 699.5 of the Military and Veterans Code is amended to read:

699.5. (a) The department may assist every veteran of the United States and the dependent or survivor of every veteran in presenting and pursuing the claim as the veteran, dependent, or survivor may have against the United States arising out of war service and in establishing the veteran's, dependent's, or survivor's right to any privilege, preference, care, or compensation provided for by the laws of the United States or of this state. The department may cooperate and, with the approval of the Department of Finance, contract with any organization of veterans chartered by the Congress of the United States and authorized by the Veterans Administration to pursue claims before federal agencies and that has regularly, for a period of five years next preceding the date of the contract, maintained an established committee or agency, in a Veterans Administration regional office in the State of California, rendering similar services to veterans, dependents, and survivors as the services referred to in this section and pursuant to the contract may compensate the organization for services within the scope of this section rendered by it to any veteran, dependent, or survivor. The department also may cooperate and, with the approval of the Department of Finance, contract with any other organization of veterans authorized by the Veterans Administration to pursue claims before federal agencies and that has regularly, for a period of 12 years next preceding the date of the contract, maintained an established committee or agency, in a Veterans Administration regional office in the State of California, rendering similar services to veterans, dependents, and survivors as the services referred to in this section and pursuant to the contract may compensate the organization for services within the scope of this section rendered by it to any

veteran, dependent, or survivor. The contract shall not be made unless the department determines that, owing to the confidential relationships involved and the necessity of operating through agencies that the veterans, dependents, or survivors involved will feel to be sympathetic towards their problems, the services cannot satisfactorily be rendered otherwise than through the agency of the veterans organization and that the best interests of the veterans, dependents, or survivors involved will be served if the contract is made.

(b) For the purposes of this section "survivor" means any relation of a deceased veteran who may be entitled to make a claim for any privilege, preference, care, or compensation under the laws of the United States or this state based upon the veteran's war service.

SEC. 2. Section 897 of the Military and Veterans Code is repealed.

SEC. 3. Section 975.5 of the Military and Veterans Code is amended to read:

975.5. (a) The Department of Veterans Affairs shall provide for one paid veterans assistant position within the office of the county veteran service officer for the County of Los Angeles. The department shall establish one similar position for the County of San Diego and one similar position for the City and County of San Francisco.

(b) The veterans assistants employed under subdivision (a) shall conduct outreach programs in order to make veterans aware of readjustment counseling services and alcohol and drug abuse programs offered by community-based organizations and city, county, and federal agencies. The veterans assistants shall advise and counsel veterans concerning readjustment counseling programs and refer veterans to appropriate community-based or city, county, or federal counseling programs.

SEC. 4. Section 987.567 of the Military and Veterans Code is repealed.

SEC. 5. Section 987.61 of the Military and Veterans Code is amended to read:

987.61. The department may purchase property, subject to a participation contract providing for a loan term of not less than 23 years. The purchase price plus the participation contract shall not exceed the maximum purchase prices available under this article.

SEC. 6. Section 987.71 of the Military and Veterans Code is amended to read:

987.71. (a) The purchaser shall make an initial payment of at least 5 percent of the selling price of the property. Purchasers of homes where the purchase price is equal to or less than sixty thousand dollars ($60,000) shall make an initial payment of at least 3 percent of the selling price of the property. The department may waive the initial payment in any case where the value of the property as determined by the department appraisal equals the amount to be paid by the department plus at least 5 percent where the purchase price is greater than sixty thousand dollars ($60,000). In the case of

homes where the purchase price is equal to or less than sixty thousand dollars ($60,000), the department may waive the initial payment where the value of the property as determined by the department appraisal equals the amount to be paid by the department plus at least 3 percent.

(b) The balance of the purchase price may be amortized over a period fixed by the department, not exceeding 40 years for farms or homes and not exceeding 30 years for mobilehomes, together with interest thereon at the rate determined by the department pursuant to Section 987.87 for these amortization purposes.

(c) The department may, in order to allow the veteran to purchase the home selected without incurring excessive monthly payments, at the time of initial purchase, postpone the commencement of payment of the principal balance for not to exceed five years if the veteran's current income meets the standards for purchase on these terms and if the department determines, in accordance with previously established criteria for these determinations, that the veteran's income can reasonably be expected to increase sufficiently within the five-year period to make the transition to fully amortized principal and interest payments, so long as the total term of the contract of purchase does not exceed 40 years.

(d) The purchaser on any installment date may pay any or all installments still remaining unpaid.

(e) In any individual case, the department may for good cause postpone, from time to time, upon terms the department determines to be proper, the payment of the whole or any part of any installment of the purchase price or interest thereon.

(f) Each installment shall include an amount sufficient to pay the principal and interest on the participation contract to which the interest of the department is subject, and any amount as may be required by a covenant or provision contained in any resolution of issuance.

SEC. 7. Section 987.86 of the Military and Veterans Code is amended to read:

987.86. (a) Any veteran for whom a farm or home is purchased under this article may be granted a subsequent opportunity to purchase another farm or home when the farm or home purchased under this article is sold, or the veteran's interest is divested through divorce or dissolution of marriage, and the purchase contract is paid in full. The maximum amount that the department may advance under this subdivision is limited to the maximum amounts set forth in Section 987.65 at the time the application is made for the subsequent loan.

(b) Only one farm or home purchased under this article shall be owned by a veteran or a veteran and the veteran's spouse at any one time. This subdivision does not apply to an interest, acquired pursuant to Section 987.721, of a former spouse.

(c) Any veteran for whom a farm or home is purchased under this

article may be granted a subsequent opportunity to purchase another farm or home if he or she has paid the initial purchase contract in full and qualifies as a veteran as described in Section 980 under another separate period of service, or the veteran and the veteran's spouse each qualify as a veteran, as described in Section 980.

(d) A member of the armed forces, eligible for military retirement, who meets the requirements of Section 980, or a veteran as described in Section 980 who is receiving military retirement pay, for whom a farm or home was purchased under this article while in active military service, may be granted a subsequent opportunity to purchase another farm or home, if he or she has paid the initial purchase contract in full and has served during more than one period for which eligibility is granted.

SEC. 8. Section 987.861 of the Military and Veterans Code is repealed.

SEC. 9. Section 987.93 of the Military and Veterans Code is repealed.

SEC. 10. Section 987.94 of the Military and Veterans Code is repealed.

SEC. 11. Section 1038.5 of the Military and Veterans Code is amended to read:

1038.5. Any money deposited with the home by a veteran shall be credited with interest at no more than the State Monetary Investment Fund rate, less 0.75 percent, and shall be paid to the veteran or to his or her heirs, devisees, legatees, or the qualified executor or the administrator of his or her estate pursuant to Section 1037 or Section 1038.

CHAPTER 373

An act to amend Section 11870 of the Insurance Code, relating to insurance.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 11870 of the Insurance Code is amended to read:

11870. The state, any agency, department, division, commission, board, bureau, officer or other authority thereof, and each county, city and county, city, school district, irrigation district, any other district established by law, or other public corporation or quasi public corporation within the state, including any public utility operated by a private corporation may insure against its liability for compensation with the State Compensation Insurance Fund. Where the state or

any agency, department, division, commission, board, bureau, officer or authority thereof is the insured, the premium for that insurance shall be a proper charge against any moneys appropriated for the support of or expenditure by the insured, except that in the case of an insured supported by or authorized to expend moneys appropriated out of more than one fund, the insured, with the approval of the Director of Finance, may determine the proportion of the premium to be paid out of each fund. In that case the insured, with the approval of the Director of Finance, may pay the entire premium out of any of those funds and thereafter the funds used for payment shall be reimbursed in proper proportion out of the other funds. In case a county, city and county, city, school district, irrigation district, or other district established by law, or other public corporation or quasi public corporation within the state is the insured, the premium therefor shall be a proper charge against the general fund of the insured.

CHAPTER 374

An act to amend Sections 2941 and 2943 of the Civil Code, relating to mortgages.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 2941 of the Civil Code is amended to read:

2941. (a) Within 30 days after any mortgage has been satisfied, the mortgagee or the assignee of the mortgagee shall execute a certificate of the discharge thereof, as provided in Section 2939, and shall record or cause to be recorded, except as provided in subdivision (c), in the office of the county recorder in which the mortgage is recorded. The mortgagee shall then deliver, upon the written request of the mortgagor or the mortgagor's heirs, successors, or assignees, as the case may be, the original note and mortgage to the person making the request.

(b) (1) When the obligation secured by any deed of trust has been satisfied, the beneficiary or the assignee of the beneficiary shall execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.

(A) The trustee shall execute the full reconveyance and shall record or cause it to be recorded, except as provided in subdivision (c), in the office of the county recorder in which the deed of trust is recorded within 21 calendar days after receipt by the trustee of the original note, deed of trust, request for a full reconveyance, the fee that may be charged pursuant to subdivision (e), recorder's fees, and

other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.

(B) The trustee shall deliver a copy of the reconveyance to the beneficiary, its successor in interest, or its servicing agent, if known.

(C) Following execution and recordation of the full reconveyance, upon receipt of a written request by the trustor or the trustor's heirs, successors, or assignees, the trustee shall then deliver the original note and deed of trust to the person making that request.

(2) If the trustee has failed to execute and record, or cause to be recorded, the full reconveyance within 60 calendar days of satisfaction of the obligation, the beneficiary, upon receipt of a written request by the trustor or trustor's heirs, successor in interest, agent, or assignee, shall execute and acknowledge a document pursuant to Section 2934a substituting itself or another as trustee and issue a full reconveyance.

(3) If a full reconveyance has not been executed and recorded pursuant to either paragraph (1) or paragraph (2) within 75 calendar days of satisfaction of the obligation, then a title insurance company may prepare and record a release of the obligation. However, at least 10 days prior to the issuance and recording of a full release pursuant to this paragraph, the title insurance company shall mail by first-class mail with postage prepaid, the intention to release the obligation to the trustee, trustor, and beneficiary of record, or their successor in interest of record, at the last known address.

(A) The release shall set forth:

(i) The name of the beneficiary.

(ii) The name of the trustor.

(iii) The recording reference to the deed of trust.

(iv) A recital that the obligation secured by the deed of trust has been paid in full.

(v) The date and amount of payment.

(B) The release issued pursuant to this subdivision shall be entitled to recordation and, when recorded, shall be deemed to be the equivalent of a reconveyance of a deed of trust.

(4) Where an obligation secured by a deed of trust was paid in full prior to July 1, 1989, and no reconveyance has been issued and recorded by October 1, 1989, then a release of obligation as provided for in paragraph (3) may be issued.

(5) Paragraphs (2) and (3) do not excuse the beneficiary or the trustee from compliance with paragraph (1). Paragraph (3) does not excuse the beneficiary from compliance with paragraph (2).

(6) In addition to any other remedy provided by law, a title insurance company preparing or recording the release of the obligation shall be liable to any party for damages, including attorneys' fees, which any person may sustain by reason of the issuance and recording of the release, pursuant to paragraphs (3) and (4).

(c) The mortgagee or trustee shall not record or cause the certificate of discharge or full reconveyance to be recorded when

any of the following circumstances exists:

(1) The mortgagee or trustee has received written instructions to the contrary from the mortgagor or trustor, or the owner of the land, as the case may be, or from the owner of the obligation secured by the deed of trust or his or her agent, or escrow.

(2) The certificate of discharge or full reconveyance is to be delivered to the mortgagor or trustor, or the owner of the land, as the case may be, through an escrow to which the mortgagor, trustor, or owner is a party.

(3) When the personal delivery is not for the purpose of causing recordation and when the certificate of discharge or full reconveyance is to be personally delivered with receipt acknowledged by the mortgagor or trustor or owner of the land, as the case may be, or their agent if authorized by mortgagor or trustor or owner of the land.

(d) The violation of this section shall make the violator liable to the person affected by the violation for all damages which that person may sustain by reason of the violation, and shall require that the violator forfeit to that person the sum of three hundred dollars ($300).

(e) (1) The trustee, beneficiary, or mortgagee may charge a reasonable fee to the trustor or mortgagor, or the owner of the land, as the case may be, for all services involved in the preparation, execution, and recordation of the full reconveyance, including, but not limited to, document preparation and forwarding services rendered to effect the full reconveyance, and, in addition, may collect official fees. This fee may be made payable no earlier than the opening of a bona fide escrow or no more than 60 days prior to the full satisfaction of the obligation secured by the deed of trust or mortgage.

(2) If the fee charged pursuant to this subdivision does not exceed sixty-five dollars ($65), the fee is conclusively presumed to be reasonable. This paragraph shall only be operative until January 1, 1998.

(f) For purposes of this section, "original" may include an optically imaged reproduction when the following requirements are met:

(1) The trustee receiving the request for reconveyance and executing the reconveyance as provided in subdivision (b) is an affiliate or subsidiary of the beneficiary or an affiliate or subsidiary of the assignee of the beneficiary, respectively.

(2) The optical image storage media used to store the document shall be nonerasable write once, read many (WORM) optical image media that does not allow changes to the stored document.

(3) The optical image reproduction shall be made consistent with the minimum standards of quality approved by either the National Institute of Standards and Technology or the Association for Information and Image Management.

(4) Written authentication identifying the optical image

reproduction as an unaltered copy of the note, deed of trust, or mortgage shall be stamped or printed on the optical image reproduction.

SEC. 2. Section 2943 of the Civil Code is amended to read:

2943. (a) As used in this section:

(1) "Beneficiary" means a mortgagee or beneficiary of a mortgage or deed of trust, or his or her assignees.

(2) "Beneficiary statement" means a written statement showing:

(A) The amount of the unpaid balance of the obligation secured by the mortgage or deed of trust and the interest rate, together with the total amounts, if any, of all overdue installments of either principal or interest, or both.

(B) The amounts of periodic payments, if any.

(C) The date on which the obligation is due in whole or in part.

(D) The date to which real estate taxes and special assessments have been paid to the extent the information is known to the beneficiary.

(E) The amount of hazard insurance in effect and the term and premium of that insurance to the extent the information is known to the beneficiary.

(F) The amount in an account, if any, maintained for the accumulation of funds with which to pay taxes and insurance premiums.

(G) The nature and, if known, the amount of any additional charges, costs, or expenses paid or incurred by the beneficiary which have become a lien on the real property involved.

(H) Whether the obligation secured by the mortgage or deed of trust can or may be transferred to a new borrower.

(3) "Delivery" means depositing or causing to be deposited in the United States mail an envelope with postage prepaid, containing a copy of the document to be delivered, addressed to the person whose name and address is set forth in the demand therefor. The document may also be transmitted by facsimile machine to the person whose name and address is set forth in the demand therefor.

(4) "Entitled person" means the trustor or mortgagor of, or his or her successor in interest in, the mortgaged or trust property or any part thereof, any beneficiary under a deed of trust, any person having a subordinate lien or encumbrance of record thereon, the escrow holder licensed as an agent pursuant to Division 6 (commencing with Section 17000) of the Financial Code, or the party exempt by virtue of Section 17006 of the Financial Code who is acting as the escrow holder.

(5) "Payoff demand statement" means a written statement, prepared in response to a written demand made by an entitled person or authorized agent, setting forth the amounts required as of the date of preparation by the beneficiary, to fully satisfy all obligations secured by the loan that is the subject of the payoff demand statement. The written statement shall include information reasonably necessary to calculate the payoff amount on a per diem

basis for the period of time, not to exceed 30 days, during which the per diem amount is not changed by the terms of the note.

(b) (1) A beneficiary, or his or her authorized agent, shall, within 21 days of the receipt of a written demand by an entitled person or his or her authorized agent, prepare and deliver to the person demanding it a true, correct, and complete copy of the note or other evidence of indebtedness with any modification thereto, and a beneficiary statement.

(2) A request pursuant to this subdivision may be made by an entitled person or his or her authorized agent at any time before, or within two months after, the recording of a notice of default under a mortgage or deed of trust, or may otherwise be made more than 30 days prior to the entry of the decree of foreclosure.

(c) A beneficiary, or his or her authorized agent, shall, on the written demand of an entitled person, or his or her authorized agent, prepare and deliver a payoff demand statement to the person demanding it within 21 days of the receipt of the demand. However, if the loan is subject to a recorded notice of default or a filed complaint commencing a judicial foreclosure, the beneficiary shall have no obligation to prepare and deliver this statement as prescribed unless the written demand is received prior to the first publication of a notice of sale or the notice of the first date of sale established by a court.

(d) (1) A beneficiary statement or payoff demand statement may be relied upon by the entitled person or his or her authorized agent in accordance with its terms, including with respect to the payoff demand statement reliance for the purpose of establishing the amount necessary to pay the obligation in full. If the beneficiary notifies the entitled person or his or her authorized agent of any amendment to the statement, then the amended statement may be relied upon by the entitled person or his or her authorized agent as provided in this subdivision.

(2) If notification of any amendment to the statement is not given in writing, then a written amendment to the statement shall be delivered to the entitled person or his or her authorized agent no later than the next business day after notification.

(3) Upon the dates specified in subparagraphs (A) and (B) any sums that were due and for any reason not included in the statement or amended statement shall continue to be recoverable by the beneficiary as an unsecured obligation of the obligor pursuant to the terms of the note and existing provisions of law.

(A) If the transaction is voluntary, the entitled party or his or her authorized agent may rely upon the statement or amended statement upon the earlier of (i) the close of escrow, (ii) transfer of title, or (iii) recordation of a lien.

(B) If the loan is subject to a recorded notice of default or a filed complaint commencing a judicial foreclosure, the entitled party or his or her authorized agent may rely upon the statement or amended statement upon the acceptance of the last and highest bid at a

trustee's sale or a court supervised sale.

(e) The following provisions apply to a demand for either a beneficiary statement or a payoff demand statement:

(1) Where an entitled person or his or her authorized agent requests a statement pursuant to this section and does not specify a beneficiary statement or a payoff demand statement the beneficiary shall treat the request as a request for a payoff demand statement.

(2) Where the entitled person or the entitled person's authorized agent includes in the written demand a specific request for a copy of the deed of trust or mortgage, it shall be furnished with the written statement at no additional charge.

(3) The beneficiary may, before delivering a statement, require reasonable proof that the person making the demand is, in fact, an entitled person or an authorized agent of an entitled person, in which event the beneficiary shall not be subject to the penalties of this section until 21 days after receipt of the proof herein provided for. A statement in writing signed by the entitled person appointing an authorized agent when delivered personally to the beneficiary or delivered by registered return receipt mail shall constitute reasonable proof as to the identity of an agent. Similar delivery of a policy of title insurance, preliminary report issued by a title company, original or photographic copy of a grant deed or certified copy of letters testamentary, guardianship, or conservatorship shall constitute reasonable proof as to the identity of a successor in interest, provided the person demanding a statement is named as successor in interest in the document.

(4) If a beneficiary for a period of 21 days after receipt of the written demand willfully fails to prepare and deliver the statement, he or she is liable to the entitled person for all damages which he or she may sustain by reason of the refusal and, whether or not actual damages are sustained, he or she shall forfeit to the entitled person the sum of three hundred dollars ($300). Each failure to prepare and deliver the statement, occurring at a time when, pursuant to this section, the beneficiary is required to prepare and deliver the statement, creates a separate cause of action, but a judgment awarding an entitled person a forfeiture, or damages and forfeiture, for any failure to prepare and deliver a statement bars recovery of damages and forfeiture for any other failure to prepare and deliver a statement, with respect to the same obligation, in compliance with a demand therefor made within six months before or after the demand as to which the award was made. For the purposes of this subdivision, "willfully" means an intentional failure to comply with the requirements of this section without just cause or excuse.

(5) If the beneficiary has more than one branch, office, or other place of business, then the demand shall be made to the branch or office address set forth in the payment billing notice or payment book, and the statement, unless it specifies otherwise, shall be deemed to apply only to the unpaid balance of the single obligation named in the request and secured by the mortgage or deed of trust

which is payable at the branch or office whose address appears on the aforesaid billing notice or payment book.

(6) The beneficiary may make a charge not to exceed sixty dollars ($60) for furnishing each required statement. The provisions of this paragraph shall not apply to mortgages or deeds of trust insured by the Federal Housing Administrator or guaranteed by the Administrator of Veterans Affairs.

CHAPTER 375

An act to amend Section 94316.18 of the Education Code, relating to postsecondary education.

[Approved by Governor August 26, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 94316.18 of the Education Code is amended to read:

94316.18. (a) Every institution shall designate and maintain an agent for service of process within this state and provide the name, address, and telephone number of the agent to the council. The council shall furnish the agent's name, address, and telephone number to any person upon request.

(b) If an institution is not operating in California when it applies for approval to operate, the institution shall set forth the name, address, and telephone number of its agent for service of process in the institution's application.

(c) If an institution fails to designate or maintain an agent for service of process pursuant to subdivision (a) and if service on the institution cannot reasonably be effected in the manner provided in Section 415.10, 415.20, 415.30, or 415.40 of the Code of Civil Procedure, the institution may be served by leaving a copy of the process or any other document in an office of the council and by sending, by first-class mail, a notice of the service upon the council and a copy of the process or other document to the institution at its last address on file with the council. Service in this manner shall be deemed complete on the 10th day after that mailing to the institution. Proof of service may be made by a declaration showing compliance with this subdivision.

CHAPTER 376

An act to amend Section 44425 of the Education Code, relating to teacher credentialing.

[Approved by Governor August 29, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 44425 of the Education Code is amended to read:

44425. Whenever the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing has been convicted of any sex offense as defined in Section 44010 or controlled substance offense as defined in Section 44011, the commission shall forthwith suspend the credential. If the conviction is reversed and the holder is acquitted of the offense in a new trial or the charges against him or her are dismissed, the commission shall forthwith terminate the suspension of the credential. When the conviction becomes final or when imposition of sentence is suspended, the commission shall forthwith revoke the credential. Notwithstanding any other law, revocation shall be final without possibility of reinstatement of the credential if the conviction is for a felony sex offense, as defined in Section 44010, or a felony controlled substance offense, as defined in Section 44011, in which an element of the controlled substance offense is either the distribution to, or use of a controlled substance by, a minor.

Upon a plea of nolo contendere to any sex offense specified in Section 44010, which plea does not constitute a conviction pursuant to Section 1016 of the Penal Code, all credentials held by the respondent shall be suspended until a final disposition regarding those credentials is made by the commission. Any action that the commission is permitted to take following a conviction may be taken after the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

CHAPTER 377

An act to amend Sections 8880.29, 8880.30, and 8880.53 of the Government Code, relating to the state lottery, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 29, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 8880.29 of the Government Code is amended to read:

8880.29. (a) The commission shall promulgate regulations that specify the number and value of prizes for winning tickets or shares in each lottery game including, without limitation, cash prizes, merchandise prizes, prizes consisting of deferred payments or annuities, and prizes of tickets or shares in the same lottery game or other games conducted by the lottery, provided:

(1) In lottery games utilizing tickets, the overall estimated odds of winning some prize or some cash prize as appropriate for the lottery game shall be printed on each ticket or on a play slip.

(2) A detailed tabulation of the estimated number of prizes of each particular prize denomination that are expected to be awarded in each lottery game, or the estimated odds of winning the prizes, shall be available at each location at which tickets or shares in the lottery games are offered for sale to the public.

(b) Annuity contracts that are purchased for prizes shall be exempt from the requirements of Section 8880.57.

SEC. 2. Section 8880.30 of the Government Code is amended to read:

8880.30. The commission shall promulgate regulations that specify the method for determining winners in each lottery game, provided:

(a) No lottery game shall be based on the results of a horserace.

(b) If a lottery game utilizes a drawing of winning numbers, a drawing among entries, or a drawing among finalists, the drawings shall always be open to the public; no manual or physical selection in the drawings shall be conducted by any employee of the lottery; except for computer automated drawings, drawings shall be witnessed by a representative of a firm of independent certified public accountants; any equipment used in the drawings shall be inspected by the representative of the firm of independent certified public accountants and an employee of the lottery both before and after the drawings; and the drawings and the inspections shall be recorded on both videotape and audiotape.

(c) It is the intent of this chapter that the commission may use any of a variety of existing or future methods or technologies in determining winners.

SEC. 3. Section 8880.53 of the Government Code is amended to read:

8880.53. No lottery tickets or shares shall be sold by a lottery game retailer unless the retailer has a certificate of authority, issued by the lottery, to sell lottery tickets.

SEC. 4. The Legislature finds and declares that this act furthers the purposes of the California State Lottery Act of 1984.

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

In order that the changes made by this act may be put into effect at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 378

An act to amend Sections 8880.28 and 8880.30 of the Government Code, relating to the state lottery.

[Approved by Governor August 29, 1994. Filed with Secretary of State August 29, 1994.]

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

SECTION 1. Section 8880.28 of the Government Code is amended to read:

8880.28. (a) The commission shall promulgate regulations specifying the types of lottery games to be conducted by the lottery, provided:

(1) No lottery game may use the theme of bingo, roulette, dice, baccarat, blackjack, Lucky 7's, draw poker, slot machines, or dog racing.

(2) In lottery games utilizing tickets, each ticket in these games shall bear a unique number distinguishing it from every other ticket in that game; and no name of an elected official shall appear on these tickets.

(3) In games utilizing computer terminals or other devices, no coins or currency shall be dispensed to players from these computer terminals or devices.

(b) Notwithstanding subdivision (a), no changes in the types of games or methods of delivery of these games that incorporate technologies or mediums that did not exist, were not widely available, or were not commercially feasible at the time of the enactment of this chapter in 1984 shall be made, unless all of the following conditions are met:

(1) This chapter is amended by statute to expressly authorize these changes.

(2) The act making the amendments contains express legislative findings that the amendments are consistent with the terms of, and further the purposes of, this chapter.

(3) The amendments comport with applicable state and federal law.

(c) For purposes of this section, a change in the method of delivery means a material change in the way a consumer directly interacts with the game.

(d) Subdivision (b) shall not apply to technological changes implemented prior to the effective date of this subdivision.

(e) This section shall not be construed to limit any internal technological changes made to the equipment or components utilized by the lottery.

SEC. 2. Section 8880.30 of the Government Code is amended to read:

8880.30. The commission shall promulgate regulations that specify the method for determining winners in each lottery game, provided:

(a) A lottery game may be based on the results of a horserace with the consent of the association conducting the race and the California Horse Racing Board. Any compensation received by an association for the use of its races to determine the winners of a lottery game shall be divided equally between commissions and purses.

(b) If a lottery game utilizes a drawing of winning numbers, a drawing among entries, or a drawing among finalists, the drawings shall always be open to the public; no manual or physical selection in the drawings shall be conducted by any employee of the lottery; except for computer automated drawings, drawings shall be witnessed by a representative of a firm of independent certified public accountants; any equipment used in the drawings shall be inspected by the representative of the firm of independent certified public accountants and an employee of the lottery both before and after the drawings; and the drawings and the inspections shall be recorded on both videotape and audiotape.

(c) It is the intent of this chapter that the commission may use any of a variety of existing or future methods or technologies in determining winners.

SEC. 3. The Legislature finds and declares that this act furthers the purposes of the California State Lottery Act of 1984.

CHAPTER 379

An act to amend Sections 33741, 33742, 34377, 34377.2, 52101, and 52102 of the Health and Safety Code, relating to housing.

[Approved by Governor August 30, 1994. Filed with Secretary of State August 30, 1994.]

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

SECTION 1. Section 33741 of the Health and Safety Code is amended to read:

33741. An agency may issue bonds to provide funds to be loaned by the agency to nonprofit organizations exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (26 U.S.C. Sec. 501(c)(3)), for use by the organization to finance the acquisition of multifamily rental housing, including mobilehome parks that are or will be nonprofit or cooperatively-owned, or both, in which residents rent spaces and either rent or own the mobilehomes occupying these spaces, to provide housing within the territorial jurisdiction of the agency in accordance with the organization's tax-exempt purposes under that federal law. The bonds shall be issued so as to satisfy the requirements of Section 145 of the Internal Revenue Code of 1986, as amended (26 U.S.C. Sec. 145).

SEC. 2. Section 33742 of the Health and Safety Code is amended to read:

33742. (a) Occupancy and rent restrictions with respect to housing acquired pursuant to this chapter shall either meet the requirements of subparagraphs (A) and (B) of paragraph (1) or the requirements of paragraph (2), as follows:

(1) (A) Not less than 20 percent of the total number of units in a multifamily rental housing development financed, or for which financing has been extended or committed, pursuant to this chapter from the proceeds of the sale of bonds of each bond issuance of the agency shall be for occupancy on a priority basis by lower income households, as defined by Section 50079.5. If a multifamily rental housing development is located within a targeted area project, as defined by Section 103(b)(12)(A) of Title 26 of the United States Code, not less than 15 percent of the total number of units financed, or for which financing has been extended or committed pursuant to this chapter, shall be for occupancy on a priority basis by lower income households. Not less than one-half of the units required for occupancy on a priority basis by lower income households shall be for occupancy on a priority basis for very low income households, as defined by Section 50105.

(B) (i) With respect to multifamily rental developments that are not mobilehome parks, the rental payments on the units required for occupancy by very low income households paid by the persons

occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed 30 percent of an amount equal to 50 percent of area median income. If the nonprofit organization elects to establish a base rent for all or part of the units for lower income households and very low income households, the base rents shall be adjusted for household size. In adjusting rents for household size for this purpose, it shall be assumed that one person will occupy a studio unit, two persons will occupy a one-bedroom unit, three persons will occupy a two-bedroom unit, four persons will occupy a three-bedroom unit, and five persons will occupy a four-bedroom unit.

(ii) With respect to mobilehome parks:

(I) Where a resident rents both the mobilehome and the space occupied by the mobilehome, for spaces and mobilehomes required for occupancy by very low income households, the total rental payments paid by the household on the mobilehome and the space occupied by the mobilehome (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to that household or on behalf of that space and mobilehome) shall not exceed 30 percent of an amount equal to 50 percent of the area median income, adjusted for household size as appropriate for the unit that occupies the space.

(II) Where a resident is both the registered and legal owner of the mobilehome, is not making mortgage payments for the purchase of that mobilehome, and rents the space that the mobilehome occupies, for spaces and mobilehomes required for occupancy by very low income households, the total rental charge for occupancy of that space, excluding a reasonable allowance for other related housing costs determined at the time of acquisition of the mobilehome park by the nonprofit corporation, excluding any supplemental rental assistance from the state, the federal government, or any other public agency to that household on behalf of that space and mobilehome, shall not exceed 30 percent of 50 percent of the area median income, adjusted for household size as appropriate for the unit that occupies the space.

(III) Where a resident is the registered owner of the mobilehome, is making mortgage payments for the purchase of that mobilehome, and rents the space occupied by the mobilehome, for spaces and mobilehomes required for occupancy by very low income households, the rental charge for occupancy of a space by a mobilehome, exclusive of any charges for utilities and storage (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to that household or on behalf of that space and mobilehome), shall not exceed 15 percent of 50 percent of the area median income, adjusted for household size as appropriate for the unit that occupies the space.

(IV) In adjusting rents for household size, either the occupancy standards established in clause (i) of subparagraph (B) of paragraph

(1) of subdivision (a) or the alternative standards that assume that one person will occupy a recreational vehicle, two persons will occupy a single-wide mobilehome, and three persons will occupy a multisectional mobilehome may be utilized.

(2) The multifamily rental housing development is a "qualified low-income housing project," within the meaning of Section 42(g) of the federal Internal Revenue Code (26 U.S.C. Sec. 42), because it meets the criteria set forth in Section 42 (g) (1) (B) and (2) of the federal Internal Revenue Code.

(b) If at the time of acquisition any of the units or mobilehome spaces are occupied by ineligible households, that fact alone shall neither constitute a cause for the tenant's eviction nor render the project ineligible. Upon vacation of any unit initially occupied by an ineligible household, that unit shall be rented to an eligible household until the required residency by eligible households is attained.

(c) As a condition of financing pursuant to this chapter, the nonprofit organization shall enter into a regulatory agreement with the agency, which shall require that units reserved for occupancy by lower income households shall remain available on a priority basis for occupancy for the term of the bonds issued to provide the financing or 30 years, whichever is greater. The regulatory agreement shall contain a provision making the covenants and conditions of the agreement binding upon successors in interest of the nonprofit organization. The regulatory agreement shall be recorded in the office of the county recorder of the county in which the multifamily rental housing development is located. The regulatory agreement shall be recorded in the grantor-grantee index to the name of the property owner as grantor and to the name of the agency as grantee.

SEC. 3. Section 34377 of the Health and Safety Code is amended to read:

34377. An authority may issue bonds to provide funds to be loaned by the authority to nonprofit organizations exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (26 U.S.C. Sec. 501(c)(3)), for use by the organization to finance the acquisition of multifamily rental housing, including mobilehome parks that are or will be nonprofit or cooperatively-owned, or both, in which residents rent spaces and either rent or own the mobilehomes occupying these spaces, to provide housing within the territorial jurisdiction of the authority in accordance with the organization's tax-exempt purposes under that federal law. The bonds shall be issued so as to satisfy the requirements of Section 145 of the Internal Revenue Code of 1986, as amended (26 U.S.C. Sec. 145).

SEC. 4. Section 34377.2 of the Health and Safety Code is amended to read:

34377.2. (a) Occupancy and rent restrictions with respect to housing acquired pursuant to this article shall either meet the requirements of subparagraphs (A) and (B) of paragraph (1) or the

requirements of paragraph (2) as follows:

(1) (A) Not less than 20 percent of the total number of units in a multifamily rental housing development financed, or for which financing has been extended or committed, pursuant to this article from the proceeds of the sale of bonds of each bond issuance of the authority shall be for occupancy on a priority basis by lower income households, as defined by Section 50079.5. If a multifamily rental housing development is located within a targeted area project, as defined by Section 103(b)(12)(A) of Title 26 of the United States Code, not less than 15 percent of the total number of units financed, or for which financing has been extended or committed pursuant to this chapter, shall be for occupancy on a priority basis by lower income households. Not less than one-half of the units required for occupancy on a priority basis by lower income households shall be for occupancy on a priority basis for very low income households, as defined by Section 50105.

(B) (i) With respect to multifamily rental developments that are not mobilehome parks, the rental payments on the units required for occupancy by very low income households paid by the persons occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed 30 percent of an amount equal to 50 percent of area median income. If the nonprofit organization elects to establish a base rent for all or part of the units for lower income households and very low income households, the base rents shall be adjusted for household size. In adjusting rents for household size for this purpose, it shall be assumed that one person will occupy a studio unit, two persons will occupy a one-bedroom unit, three persons will occupy a two-bedroom unit, four persons will occupy a three-bedroom unit, and five persons will occupy a four-bedroom unit.

(ii) With respect to mobilehome parks:

(I) Where a resident rents both the mobilehome and the space occupied by the mobilehome, for spaces and mobilehomes required for occupancy by very low income households, the total rental payments paid by the household on the mobilehome and the space occupied by the mobilehome (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to that household or on behalf of that space and mobilehome) shall not exceed 30 percent of an amount equal to 50 percent of the area median income, adjusted for household size as appropriate for the unit that occupies the space.

(II) Where a resident is both the registered and legal owner of the mobilehome, is not making mortgage payments for the purchase of that home, and rents the space that the mobilehome occupies, for spaces and mobilehomes required for occupancy by very low income households, the total rental charge for occupancy of that space, excluding a reasonable allowance for other related housing costs determined at the time of acquisition of the mobilehome park by the

nonprofit corporation, excluding any supplemental rental assistance from the state, the federal government, or any other public agency to that household on behalf of that space and mobilehome, shall not exceed 30 percent of 50 percent of the area median income, adjusted for household size as appropriate for the unit that occupies the space.

(III) Where a resident is the registered owner of the mobilehome, is making mortgage payments for the purchase of that mobilehome, and rents the space occupied by the mobilehome, for spaces and mobilehomes required for occupancy by very low income households, the rental charge for occupancy of a space by a mobilehome, exclusive of any charges for utilities and storage (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to that household or on behalf of that space and mobilehome), shall not exceed 15 percent of 50 percent of the area median income, adjusted for household size as appropriate for the unit that occupies the space.

(IV) In adjusting rents for household size, either the occupancy standards established in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) or the alternative standards that assume that one person will occupy a recreational vehicle, two persons will occupy a single-wide mobilehome, and three persons will occupy a multisectional mobilehome may be utilized.

(2) The multifamily rental housing development is a "qualified low-income housing project," within the meaning of Section 42(g) of the Internal Revenue Code (26 U.S.C. Sec. 42), because it meets the criteria set forth in Section 42(g)(1)(B) and (2) of the Internal Revenue Code.

(b) If at the time of acquisition any of the units or mobilehome spaces are occupied by ineligible households, that fact alone shall neither constitute a cause for the tenant's eviction nor render the project ineligible. Upon vacation of any unit initially occupied by an ineligible household, that unit shall be rented to an eligible household until the required residency by eligible households is attained.

(c) As a condition of financing pursuant to this article, the nonprofit organization shall enter into a regulatory agreement with the authority, which shall require that units reserved for occupancy by lower income households shall remain available on a priority basis for occupancy for the term of the bonds issued to provide the financing or 30 years, whichever is greater. The regulatory agreement shall contain a provision making the covenants and conditions of the agreement binding upon successors in interest of the nonprofit organization. The regulatory agreement shall be recorded in the office of the county recorder of the county in which the multifamily rental housing development is located. The regulatory agreement shall be recorded in the grantor-grantee index to the name of the property owner as grantor and to the name of the authority as grantee.

SEC. 5. Section 52101 of the Health and Safety Code is amended

to read:

52101. A city or county may issue bonds to provide funds to be loaned by the city or county to nonprofit organizations exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (26 U.S.C. Sec. 501(c)(3)), for use by the organization to finance the acquisition of multifamily rental housing, including mobilehome parks that are or will be nonprofit or cooperatively-owned, or both, in which residents rent spaces and either rent or own the mobilehomes occupying these spaces, to provide housing within the territorial jurisdiction of the city or county in accordance with the organization's tax-exempt purposes under that federal law. The bonds shall be issued so as to satisfy the requirements of Section 145 of the Internal Revenue Code of 1986, as amended (26 U.S.C. Sec. 145).

SEC. 6. Section 52102 of the Health and Safety Code is amended to read:

52102. (a) Occupancy and rent restrictions with respect to housing acquired pursuant to this chapter shall either meet the requirements of subparagraphs (A) and (B) of paragraph (1) or the requirements of paragraph (2), as follows:

(1) (A) Not less than 20 percent of the total number of units in a multifamily rental housing development financed, or for which financing has been extended or committed, pursuant to this chapter from the proceeds of the sale of bonds of each bond issuance of the city or county shall be for occupancy on a priority basis by lower income households, as defined by Section 50079.5. If a multifamily rental housing development is located within a targeted area project, as defined by Section 103(b)(12)(A) of Title 26 of the United States Code, not less than 15 percent of the total number of units financed, or for which financing has been extended or committed pursuant to this chapter, shall be for occupancy on a priority basis by lower income households. Not less than one-half of the units required for occupancy on a priority basis by lower income households shall be for occupancy on a priority basis for very low income households, as defined by Section 50105.

(B) (i) With respect to multifamily rental developments that are not mobilehome parks, the rental payments on the units required for occupancy by very low income households paid by the persons occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed 30 percent of an amount equal to 50 percent of area median income. If the nonprofit organization elects to establish a base rent for all or part of the units for lower income households and very low income households, the base rents shall be adjusted for household size. In adjusting rents for household size for this purpose, it shall be assumed that one person will occupy a studio unit, two persons will occupy a one-bedroom unit, three persons will occupy a two-bedroom unit, four persons will occupy a three-bedroom unit, and five persons will

occupy a four-bedroom unit.

(ii) With respect to mobilehome parks:

(I) Where a resident rents both the mobilehome and the space occupied by the mobilehome, for spaces and mobilehomes required for occupancy by very low income households, the total rental payments paid by the household on the mobilehome and the space occupied by the mobilehome (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to that household or on behalf of that space and mobilehome) shall not exceed 30 percent of an amount equal to 50 percent of the area median income, adjusted for household size as appropriate for the unit that occupies the space.

(II) Where a resident is the registered and legal owner of the mobilehome, is not making mortgage payments for the purchase of that mobilehome, and rents the space that the mobilehome occupies, for spaces and mobilehomes required for occupancy by very low income households, the total rental charge for occupancy of that space, excluding a reasonable allowance for other related housing costs determined at the time of acquisition of the mobilehome park by the nonprofit corporation, excluding any supplemental rental assistance from the state, the federal government, or any other public agency to that household on behalf of that space and mobilehome, shall not exceed 30 percent of 50 percent of the area median income, adjusted for household size as appropriate for the unit that occupies the space.

(III) Where a resident is the registered owner of the mobilehome, is making mortgage payments for the purchase of that mobilehome, and rents the space occupied by the mobilehome, for spaces and mobilehomes required for occupancy by very low income households, the rental charge for occupancy of a space by a mobilehome, exclusive of any charges for utilities and storage (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to that household or on behalf of that space and mobilehome), shall not exceed 15 percent of 50 percent of the area median income, adjusted for household size as appropriate for the unit that occupies the space.

(IV) In adjusting rents for household size, either the occupancy standards established in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) or the alternative standards that assume that one person will occupy a recreational vehicle, two persons will occupy a single-wide mobilehome, and three persons will occupy a multisectional mobilehome may be utilized.

(2) The multifamily rental housing development is a "qualified low-income housing project," within the meaning of Section 42(g) of the Internal Revenue Code (26 U.S.C. Sec. 42), because it meets the criteria set forth in Section 42(g)(1)(B) and (2) of the Internal Revenue Code.

(b) If at the time of acquisition any of the units or mobilehome spaces are occupied by ineligible households, that fact alone shall

neither constitute a cause for the tenant's eviction nor render the project ineligible. Upon vacation of any unit initially occupied by an ineligible household, that unit shall be rented to an eligible household until the required residency by eligible households is attained.

(c) As a condition of financing pursuant to this chapter, the nonprofit organization shall enter into a regulatory agreement with the city or county, which shall require that units reserved for occupancy by lower income households shall remain available on a priority basis for occupancy for the term of the bonds issued to provide the financing or 30 years, whichever is greater. The regulatory agreement shall contain a provision making the covenants and conditions of the agreement binding upon successors in interest of the nonprofit organization. The regulatory agreement shall be recorded in the office of the county recorder of the county in which the multifamily rental housing development is located. The regulatory agreement shall be recorded in the grantor-grantee index to the name of the property owner as grantor and to the name of the city or county as grantee.

CHAPTER 380

An act to amend Section 798.24 of the Civil Code, relating to mobilehome parks.

[Approved by Governor August 30, 1994. Filed with Secretary of State August 30, 1994.]

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

SECTION 1. Section 798.24 of the Civil Code is amended to read:

798.24. Each common area facility shall be open or available to residents at all reasonable hours and the hours of the common area facility shall be posted at the facility. No homeowner shall be required to obtain liability insurance in order to use common area facilities for the purposes specified in Section 798.51.

CHAPTER 381

An act to add Section 33420.2 to the Health and Safety Code, relating to redevelopment.

[Approved by Governor August 30, 1994. Filed with Secretary of State August 30, 1994.]

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

SECTION 1. Section 33420.2 is added to the Health and Safety Code, to read:

33420.2. Within a project area, an agency may take any actions that the agency determines are necessary to remove graffiti from public or private property upon making a finding that, because of the magnitude and severity of the graffiti within the project area, the action is necessary to effectuate the purposes of the redevelopment plan, and that the action will assist with the elimination of blight, as defined in Section 33031.

CHAPTER 382

An act to amend Section 714 of the Civil Code, relating to solar energy.

[Approved by Governor August 30, 1994. Filed with Secretary of State August 30, 1994.]

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

SECTION 1. Section 714 of the Civil Code is amended to read:

714. (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

(b) This section shall not apply to provisions which impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

(c) For the purposes of this section:

(1) "Significantly" means an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the solar energy

system by an amount exceeding 20 percent, as originally specified and proposed. Solar collectors shall meet applicable standards and requirements imposed by state and local permitting authorities. Specifically, solar energy systems shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agencies. SRCC is a nonprofit third-party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(2) "Solar energy system" has the same meaning as defined in Section 801.5.

(d) Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed.

(e) Any entity, other than a public entity, that willfully violates this section shall be liable to the applicant or other party for actual damages occasioned thereby, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars ($1,000).

(f) In any action to enforce compliance with this section, the prevailing party shall be awarded reasonable attorney's fees.

SEC. 2. It is the intent of the Legislature in enacting this act to remove obstacles to the use of solar energy systems, and to encourage their installation in order to achieve maximum efficiency at an affordable cost.

CHAPTER 383

An act to add and repeal Sections 9143.5 and 13310 of the Government Code, relating to state fiscal analysis.

[Approved by Governor August 30, 1994. Filed with Secretary of State August 30, 1994.]

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

SECTION 1. It is the intent of the Legislature in enacting this act to ensure that the Legislature and the Governor are presented with reliable information from the Legislative Analyst's office and the Department of Finance as to the probable behavioral responses of taxpayers, businesses, and other citizens to changes in state tax laws. Specifically, the Legislature intends that dynamic estimating techniques be used in estimating the state fiscal impact of proposals to change those laws, to the extent that data are available to permit estimates to be made in that manner.

SEC. 2. Section 9143.5 is added to the Government Code, to read:

9143.5. (a) To the extent that any fiscal estimate prepared by the Legislative Analyst regarding the annual state budget involves one or more proposed changes in state tax law, the Legislative Analyst shall prepare the estimate, except where it is unreasonable to do so, on the basis of assumptions that estimate the probable behavioral responses of taxpayers, businesses, and other citizens to those proposed changes, and shall include in the fiscal estimate a statement identifying those assumptions. The requirement set forth in this section applies only to a proposed change in state tax law determined by the Legislative Analyst, pursuant to a static fiscal estimate, to have a fiscal impact in excess of ten million dollars ($10,000,000) in any one fiscal year.

(b) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 3. Section 13310 is added to the Government Code, to read:

13310. (a) To the extent that any fiscal impact estimate prepared by the Department of Finance involves one or more proposed changes in state tax law, the department shall prepare the estimate, except where it is unreasonable to do so, on the basis of assumptions that estimate the probable behavioral responses of taxpayers, businesses, and other citizens to those proposed changes, and shall include in the fiscal impact estimate a statement identifying those assumptions. The requirement set forth in this section shall apply only to a proposed change in state tax law determined by the Department of Finance, pursuant to a static fiscal estimate, to have a fiscal impact in excess of ten million dollars ($10,000,000) in any one fiscal year.

(b) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

CHAPTER 384

An act to amend Section 53088.2 of the Government Code, relating to cable television.

[Approved by Governor August 30, 1994. Filed with Secretary of State August 30, 1994.]

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

SECTION 1. Section 53088.2 of the Government Code is amended to read:

53088.2. (a) Every video provider shall render reasonably efficient service, make repairs promptly, and interrupt service only as necessary.

(b) All video provider personnel contacting subscribers or potential subscribers outside the office of the provider shall be clearly identified as associated with the video provider.

(c) At the time of installation, and annually thereafter, all video providers shall provide to all customers a written notice of the programming offered, the prices for that programming, the provider's installation and customer service policies, and the name, address, and telephone number of the local franchising authority.

(d) All video providers shall have knowledgeable, qualified company representatives available to respond to customer telephone inquiries Monday through Friday, excluding holidays, during normal business hours.

(e) All video providers shall provide to customers a toll-free or local telephone number for installation, and service, and complaint calls. These calls shall be answered promptly by the video providers. The city, county, or city and county may establish standards for what constitutes promptness.

(f) All video providers shall render bills which are accurate and understandable.

(g) All video providers shall respond to a complete outage in a customer's service promptly. The response shall occur within 24 hours of the reporting of such outage to the provider, except in those situations beyond the reasonable control of the video provider. A video provider shall be deemed to respond to a complete outage when a company representative arrives at the outage location within 24 hours and begins to resolve the problem.

(h) All video providers shall provide a minimum of 30 days' written notice before increasing rates or deleting channels. All video providers shall make every reasonable effort to submit the notice to the city, county, or city and county in advance of the distribution to customers. The 30-day notice is waived if the increases in rates or deletion of channels were outside the control of the video provider. In those cases the video provider shall make reasonable efforts to provide customers with as much notice as possible.

(i) Every video provider shall allow every residential customer who pays his or her bill directly to the video provider at least 15 days from the date the bill for services is mailed to the customer, to pay the listed charges unless otherwise agreed to pursuant to a residential rental agreement establishing tenancy. Customer payments shall be posted promptly. No video provider may terminate residential service for nonpayment of a delinquent account unless the video provider furnishes notice of the delinquency and impending termination at least 15 days prior to the proposed termination. The notice shall be mailed, postage prepaid, to the customer to whom the service is billed. Notice shall not be mailed until the 16th day after the date the bill for services was mailed to the customer. The notice of delinquency and impending termination may be part of a billing statement. No video provider may assess a late fee any earlier than the 22nd day after the bill for service has been mailed.

(j) Every notice of termination of service pursuant to subdivision (i) shall include all of the following information:

(1) The name and address of the customer whose account is delinquent.

(2) The amount of the delinquency.

(3) The date by which payment is required in order to avoid termination of service.

(4) The telephone number of a representative of the video provider who can provide additional information and handle complaints or initiate an investigation concerning the service and charges in question.

Service may only be terminated on days in which the customer can reach a representative of the video provider either in person or by telephone.

(k) Any service terminated without good cause shall be restored without charge for the service restoration. Good cause includes, but is not limited to, failure to pay, payment by check for which there are insufficient funds, theft of service, abuse of equipment or system personnel, or other similar subscriber actions.

(*l*) All video providers shall issue requested refund checks promptly, but no later than 45 days following the resolution of any dispute, and following the return of the equipment supplied by the video provider, if service is terminated.

(m) All video providers shall issue security or customer deposit refund checks promptly, but no later than 45 days following the termination of service, less any deductions permitted by law.

(n) Video providers shall not disclose the name and address of a subscriber for commercial gain to be used in mailing lists or for other commercial purposes not reasonably related to the conduct of the businesses of the video providers or their affiliates , unless the video providers have provided to the subscriber a notice, separate or included in any other customer notice, that clearly and conspicuously describes the subscriber's ability to prohibit the disclosure. Video providers shall provide an address and telephone number for a local subscriber to use without toll charge to prevent disclosure of the subscriber's name and address.

(o) Disputes concerning the provisions of this article shall be resolved by the city, county, or city and county in which the customer resides. For video providers under Section 53066, the franchising authority shall resolve disputes. All other video providers shall register with the city in which they provide service or, where the customers reside in an unincorporated area, in the county in which they provide service. The registration shall include the name of the company, its address, its officers, telephone numbers, and customer service and complaint procedures. Counties and cities may charge these other video providers operating in the state a fee to cover the reasonable cost of administering this division.

(p) Nothing in this division limits any power of a city, county, or city and county or video provider to adopt and enforce service

standards and consumer protection standards which exceed those established in this division.

(q) The legislative body of the city, county, or city and county, may, by ordinance, provide a schedule of penalties for the material breach by a video provider of subdivisions (a) to (n), inclusive. No monetary penalties shall be assessed for a material breach where the breach is out of the reasonable control of the video provider. Further, no monetary penalties may be imposed prior to the effective date of this section. Any schedule of monetary penalties adopted pursuant to this section shall in no event exceed two hundred dollars ($200) for each day of each material breach, not to exceed six hundred dollars ($600) for each occurrence of material breach. However, where a material breach of any of subdivisions (a) to (n), inclusive, has occurred and the city, county, or city and county has provided notice and a fine or penalty has been assessed, in a subsequent material breach of the same nature occurring within 12 months, the penalties may be increased by the city, county, or city and county to a maximum of four hundred dollars ($400) for each day of each material breach, not to exceed twelve hundred dollars ($1,200) for each occurrence of the material breach. Where a third or further material breach of the same nature occurs within those same 12 months, and the city, county, or city and county has provided notice and a fine or penalty has been assessed, the penalties may be increased to a maximum of one thousand dollars ($1,000) for each day of each material breach, not to exceed three thousand dollars ($3,000) for each occurrence of the material breach. With respect to video providers subject to a franchise or license, any monetary penalties assessed under this section shall be reduced dollar for dollar to the extent any liquidated damage or penalty provision of a current cable television ordinance, franchise contract, or license agreement imposes a monetary obligation upon a video provider for the same customer service failures, and no other monetary damages may be assessed. However, this section shall in no way affect the right of franchising authorities concerning assessment or renewal of a cable television franchise under the provisions of the Cable Communications Policy Act of 1984.

(r) If the legislative body of a city, county, or city and county adopts a schedule of monetary penalties pursuant to subdivision (o), the following procedures shall be followed:

(1) The city, county, or city and county shall give the video provider written notice of any alleged material breaches of the consumer service standards of this division and allow the video provider at least 30 days from receipt of the notice to remedy the specified breach.

(2) A material breach for the purposes of assessing penalties shall be deemed to have occurred for each day, following the expiration of the period specified in paragraph (1), that any material breach has not been remedied by the video provider, irrespective of the number of customers affected.

(s) Notwithstanding subdivision (m), or any other provision of law, this section shall not preclude a party affected by this section from utilizing any judicial remedy available to that party without regard to this section. Actions taken by a local legislative body, including a franchising authority, pursuant to this section shall not be binding upon a court of law. For this purpose a court of law may conduct de novo review of any issues presented.

(t) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

(u) This section shall become operative on September 1, 1993.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 385

An act to amend Section 1190 of the Harbors and Navigation Code, relating to pilotage, and making an appropriation therefor.

[Approved by Governor August 30, 1994. Filed with Secretary of State August 30, 1994.]

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

SECTION 1. Section 1190 of the Harbors and Navigation Code is amended to read:

1190. (a) Every vessel spoken inward or outward bound, shall pay the following rate of bar pilotage through the Golden Gate and into or out of the Bays of San Francisco, San Pablo, and Suisun:

(1) Seven dollars and thirty-five cents ($7.35) per draft foot of the vessel's deepest draft and fractions of a foot pro rata, and an additional charge of 64.88 mills per high gross registered ton.

(A) This additional charge of 64.88 mills may be augmented by an incremental rate of 0.78 additional mill for each pilot appointed by the board in excess of 60 pilots.

(B) In addition to the rate augmentation specified in

subparagraph (A), the additional charge of 64.88 mills per high gross registered ton shall be adjusted quarterly effective on April 1, July 1, October 1, and January 1 of each year based solely upon a quarterly recalculation of actual gross registered tonnage made during the quarter preceding the effective date of change, based upon the most recent four quarters' traffic volume. This quarterly adjustment shall be calculated by the fiduciary selected by the board pursuant to Section 1162. The fiduciary shall determine the quarterly adjusted rate by a calculation wherein the total revenue to be generated by the mill rate, as approved by the board at a public hearing on May 26, 1994, pursuant to Section 1201.6, is the dividend and the total of the actual gross registered tonnage from the four most recent quarters preceding the quarter ending immediately before the effective date of the adjustment is the divisor. The resultant quotient, calculated to the nearest one-hundredth of a mill, shall be the new mill rate effective on the first day of the succeeding quarter and will remain in effect for that quarter or until otherwise adjusted.

(C) If the actual cost to the pilots during 1995 for extraordinary maintenance and repair of two pilot boats is less than two hundred thousand dollars ($200,000), the board shall temporarily reduce the additional charge proportionate to the savings.

(2) A minimum charge for bar pilotage shall be six hundred dollars ($600) for each vessel piloted.

(3) The vessel's deepest draft shall be the maximum draft attained, on a stillwater basis, at any part of the vessel during the course of such transit inward or outward.

(b) The rate specified in subdivision (a) shall apply only to a pilotage which passes through the Golden Gate to or from the high seas to or from a berth within an area bounded by the Southern Pacific Bridge to the north and Hunter's Point to the south. The rate for pilotage to or from the high seas to or from a point past the Southern Pacific Bridge or Hunter's Point shall include a movement fee in addition to the basic bar pilotage rate as specified by the board pursuant to Section 1191.

(c) The rate established in paragraph (1) of subdivision (a) shall be for a trip from the high seas to dock or from the dock to high seas. The rate specified in Section 1191 shall not be charged by pilots for docking and undocking vessels. This subdivision does not apply to the rates charged by inland pilots for their services.

(d) The board shall determine the number of pilots to be licensed based on the 1986 manpower study adopted by the board.

CHAPTER 386

An act to amend Section 87103 of the Government Code, relating to the Political Reform Act of 1974.

[Became law without Governor's signature. Filed with Secretary of State August 30, 1994.]

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

SECTION 1. Section 87103 of the Government Code is amended to read:

87103. A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars ($1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars ($1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars ($250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars ($250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (d) of Section 89504.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

SEC. 2. The amount of the value of gifts subject to subdivision (e) of Section 87103 of the Government Code shall, effective January 1, 1995, be two hundred seventy dollars ($270) until adjusted by the Fair Political Practices Commission at the same time and in the same

amount as the amount determined pursuant to subdivision (e) of Section 89504.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. The Legislature finds and declares that the provisions of this act further the purpose of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 387

An act calling a special election to be consolidated with the general election of November 8, 1994, to take effect immediately, as an act calling an election.

[Approved by Governor August 31, 1994. Filed with Secretary of State August 31, 1994.]

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

SECTION 1. A special election is hereby called to be held throughout the state on November 8, 1994. The election shall be consolidated with the general election to be held on that date. The consolidated election shall be held and conducted in all respects as if there were only one election and only one form of ballot shall be used.

SEC. 2. Notwithstanding Sections 3525 and 10218 of the Elections Code, or any other provision of law, at the election called by this act the following measures, if enacted during the 1993–94 Regular Session, shall be submitted to the voters and shall appear on the ballot of that election: Senate Constitutional Amendment 7, Assembly Constitutional Amendment 37, Assembly Constitutional Amendment 40, and Assembly Constitutional Amendment 46.

SEC. 3. Notwithstanding Section 10302.5 of the Elections Code, the public shall be permitted to examine the condensed statement of the ballot title for the measures specified in Section 2 of this act for not more than eight days. Any voter may seek a writ of mandate for the purpose of requiring any statement of the ballot title, or portion thereof, to be amended or deleted only within that eight-day period.

SEC. 4. This is an act calling an election pursuant to paragraph (3) of subdivision (c) of Section 8 of Article IV of the Constitution, and shall take effect immediately.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 388

An act to add Chapter 4.1 (commencing with Section 4451) to Division 2 of the Public Utilities Code, and to add Part 21 (commencing with Section 42000) to Division 2 of the Revenue and Taxation Code, relating to public utilities.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Chapter 4.1 (commencing with Section 4451) is added to Division 2 of the Public Utilities Code, to read:

CHAPTER 4.1 ENFORCEMENT OF FEDERAL PIPELINE SAFETY STANDARDS FOR PROPANE OPERATORS

4451. As used in this chapter:

(a) "Supplier" means a person or corporation, other than a public utility, who sells propane and arranges for its delivery to the operator's tank.

(b) "Distribution system" means a system of pipes, operated by a person or corporation other than a public utility, serving 10 or more customers, within a citywide area, an apartment house, a condominium, a cluster of homes, a shopping center, a combination of any of the above, or a mobilehome park with two or more customers, which is connected to tank or tanks, for the purpose of distribution of propane to the end customers.

(c) "Operator" means the owner of the mobilehome park or the distribution system, or the designated responsible employee, manager, or legal representative.

(d) "Tank" means a vessel for the storage and distribution of propane.

(e) "Department" means the Department of Housing and Community Development.

(f) "Local enforcement agency" means the city, county, or city and county that has assumed the responsibility for the enforcement of Chapter 2 (commencing with Section 18300) of Part 2.1 of Division 13 of the Health and Safety Code.

(g) "Federal law" or "federal pipeline standards" means the Federal Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. Sec. 1671 et seq.) and the regulations contained in Parts 190, 191, and 192 of Title 49 of the Code of Federal Regulations.

(h) "Propane" means propane gas, also known as liquid petroleum gas or LPG.

(i) "NFPA 58" means National Fire Protection Association Standard number 58, which covers rules and standards for propane service. The Legislature finds and declares that NFPA 58 is overseen by a national committee that ensures that the standard incorporates the latest in current and approved technology.

(j) "Commission" means the Public Utilities Commission.

(k) "Board" means the State Board of Equalization.

(*l*) "General Order (or GO) 112" means the commission's general order that sets out rules governing design, construction, testing, maintenance, and operation of utility gas gathering, transmission, and distribution piping systems. GO 112 incorporates, by reference, all the pertinent federal laws defined in subdivision (g).

4452. (a) On or before July 1, 1995, the commission shall undertake a propane safety inspection and enforcement program for propane distribution systems to ensure compliance with the federal pipeline standards by propane operators within the state. The commission may adopt rules, which shall be at least as stringent as the federal law, in order to protect the health and safety of customers served by propane distribution systems. Nothing in this chapter prohibits the commission from adopting more stringent standards than those in the federal pipeline standards.

(b) As part of this propane safety inspection and enforcement program, the commission inspectors may:

(1) Enter public or private property as is necessary to carry out this chapter.

(2) Enter and inspect all propane distribution systems, wherever situated, and inspect all documents (including those records listed in subdivision (a) of Section 4453), accommodations, equipment, or paraphernalia used in connection with or related to the distribution system.

(c) The commission's propane safety inspection and enforcement program shall not cover propane used by any of the following:

(1) Single customers served by single tanks.

(2) Distribution systems, other than mobilehome parks, that serve

less than 10 customers.

(3) Recreational vehicles and appliances.

(4) Vehicular fuel.

(5) Agricultural, commercial serving less than 10 customers, industrial, and refinery systems.

(6) Cylinder exchange operations.

4453. (a) The commission shall conduct an initial inspection of each distribution system which shall take place on the premises. The inspection shall determine if the distribution system falls under the commission's safety program pursuant to paragraph (2) of subdivision (c) of Section 4452. If it is determined that it does not, then the inspection shall be terminated immediately. Otherwise, the inspection, and all followup inspections, shall consist of all of the following:

(1) A review of the adequacy of the operator's operation and maintenance plan, emergency plan, and system map or maps.

(2) Evaluation of the information contained in the required annual report.

(3) A review of the records of leak surveys and repairs, corrosion control, and cathodic protection of the system.

(4) If deemed appropriate from the review of the records, a physical inspection of the propane distribution system to ensure compliance with the federal law, the applicable sections of General Order 112 relating to the distribution system, NFPA 58, and any rules and orders adopted by the commission pursuant to this chapter.

(b) If the operator demonstrates compliance pursuant to subdivision (a), the distribution system shall thereafter be inspected once every five years for distribution systems with less than 100 customers, once every three years for distribution systems with 100 or more but less than 200 customers, and once every two years for distribution systems with 200 or more customers. The subsequent inspections shall consist of the elements specified in subdivision (a). However, the commission may institute an inspection for a distribution system of any size, at any time, if it determines, following a review of a subsequent annual report or receipt of a complaint, that an additional inspection is necessary.

(c) If the operator does not demonstrate compliance pursuant to subdivision (a), the distribution system may be inspected on an annual basis until such time as there is compliance, and thereafter, shall be inspected as specified in subdivision (b).

(d) If upon the initial inspection or any subsequent inspection, the commission determines the presence of a propane leak or other safety hazard in the distribution system that poses a significant or immediate danger to the health and safety of the customers, the distribution system may be inspected more frequently until the condition is corrected. Once corrected, the distribution system shall be inspected as specified in subdivision (b).

(e) The commission may require an operator to provide necessary assistance to commission inspectors in entering and inspecting the

distribution systems, including, but not limited to:

(1) Allowing commission inspectors entry to the premises.

(2) Having, upon notice, the necessary records specified in subdivision (a) available for the commission inspector's review during the physical inspection.

(3) Assisting in surveying or uncovering portions of distribution system for purposes of inspection, verification, and testing.

(f) It shall be a violation for an operator to willfully obstruct a commission inspector's access, entry, or inspection of a distribution system.

(g) The commission may enforce subdivision (f) by issuing a citation in the manner specified in subdivision (b) of Section 4457, and shall notify the department or local enforcement agency, the supplier serving the distribution system, the State Fire Marshal, local fire districts, and the operator of any citation issued pursuant to this subdivision.

(h) If the commission determined, upon inspection or a receipt of a complaint or disclosure, that a distribution system pursuant to paragraph (2) of subdivision (c) of Section 4452 is serving more than nine customers, then the distribution system shall be subject to the commission's safety program as set forth out in this chapter.

4454. (a) Every operator of a system serving 10 or more units, with the exception of mobilehome parks operators, shall prepare and submit to the commission annually a report on the distribution system. The report shall be submitted by March 31 of each year and shall cover the previous calendar year.

(b) In the case of mobilehome parks, the report shall be submitted to the commission at the same time the annual application for a permit to operate the mobilehome park is submitted to the department or the local enforcement agency.

(c) The report shall be prepared using a form or forms required by the commission, and shall contain the information the commission finds necessary to carry out the intent of this chapter. In developing the form or forms, the commission shall consult with interested parties to ensure that the form contains no more than the necessary and appropriate information to carry out the intent of this chapter.

(d) Upon receipt of the report, the commission shall examine the report for violations of either applicable federal pipeline safety laws or regulations or any applicable commission rules or orders. The commission may inspect the operator's distribution system for the purpose of verifying whether or not a violation of federal or state pipeline safety laws or regulations, or NFPA 58 rules, has occurred or is occurring.

4454.5. (a) Every operator shall maintain all of the following:

(1) A map, drawing, or diagram that indicates the location of the distribution system's main and service lines, tank (or tanks), regulators, the identity and location of key valves, and the identity of the supplier.

(2) A copy of each annual report that has been submitted

pursuant to the federal law or this chapter.

(3) A copy of any record of leak surveys and repairs, corrosion control, and cathodic protection of the system.

(4) An operation and maintenance plan, and an emergency plan.

(b) The information and records listed in subdivision (a) shall be provided to any subsequent operator of the distribution system upon the sale, transfer, or other conveyance of title to the distribution system.

(c) Notwithstanding any other provision of law, there shall be no penalty pursuant to Section 4457 imposed upon a subsequent operator of the distribution system who has not received the information and records listed in subdivision (a) from the transferring operator or upon any operator who fails to have the information and records for any period on or before the effective date of this section.

4455. Except as specified in Section 4456, after each inspection, the commission shall furnish the operator, or a representative designated in writing by the operator, with a written copy of the inspection report within 30 days of the inspection. The report shall indicate any violations of applicable federal or state pipeline safety regulations. The operator shall then file, within 30 days, a written response with the commission that acknowledges receipt of the report and specifies a compliance plan for correcting the safety violations, including, if appropriate, a timetable for completing necessary repairs or improvements to the distribution system.

4456. (a) If the commission determines the presence of a propane leak or other safety hazard in the distribution system, which poses a significant or immediate danger to the health and safety of the distribution system's customers, it shall notify the supplier serving the distribution system; the operator, who shall provide notice to the affected customers; and local authorities, as deemed necessary.

(b) The commission shall require the operator to take immediate steps to correct and repair the propane leak or other hazard. The operator of a mobilehome park shall obtain permits from the department or local enforcement agency, as required by Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code. Other operators shall obtain permits from local agencies, such as the county or fire district. The commission may direct the serving supplier to terminate service to the tank if an operator does not comply with this requirement. The cost of repair or corrective action shall be borne by the operator.

4457. (a) Any operator who commits a violation enumerated in subdivision (f) of Section 4453 or who fails to file the report required by Section 4454 or fails to comply with a directive of the commission pursuant to Section 4456 is subject to a civil penalty of not more than one thousand dollars ($1,000) for each day that the violation, or failure to file the report or respond to the directive continues, but not to exceed two hundred thousand dollars ($200,000) for a single

violation or related series of violations. The commission shall enforce this subdivision.

(b) The commission may enforce subdivision (a) in the following manner:

(1) By issuing a citation to the operator, as defined by Section 18603 of the Health and Safety Code. In the event of a violation that constitutes a significant or immediate danger to the health and safety of the customers, the citation shall be issued immediately and served upon the responsible person or the holder of the permit to operate the distribution system. The operator shall be responsible for the correction of any violations for which a citation has been given pursuant to this subdivision.

(2) Service of the citation shall be effected either personally or by first-class mail. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the statutory provisions or regulations alleged to have been violated, as well as any penalty provided by law for failure to make a timely correction. The citation shall fix the earliest feasible time, as determined by the commission, for the elimination of the condition constituting the alleged violation.

(3) A distribution system operator may request an informal conference with the commission staff to challenge any citation alleging a violation, or any directive to correct a violation. The informal conference, any subsequent hearings, or appeals of a decision of the commission shall be conducted in accordance with the rules and procedures prescribed by the commission.

(c) The remedies provided by this chapter are cumulative and shall not be construed to supersede other provisions of law providing sanctions for violators of this chapter, including, but not limited to, Sections 2112 and 2113.

(d) Nothing in this chapter affects the tort liability of the operator of a distribution system.

4458. (a) The commission, together with the board, shall establish a uniform billing per gallon of propane (or, alternatively, a uniform billing per space or customer) surcharge to be paid by operators with distribution systems subject to this chapter on propane purchased for distribution to their customers. The surcharge shall be designed to recover the commission's costs of the propane safety inspection and enforcement program required by this chapter, and to recover the board's costs of collecting and administering the surcharge. The board shall collect the surcharge from the operators and deposit it into the Propane Safety Inspection and Enforcement Program Trust Fund. In the case of a mobilehome park, the surcharge shall be assessed on a per space or lot basis, shall not exceed twenty-five cents ($0.25) per month, and shall not be collected by the board on less than a quarterly basis.

(b) Notwithstanding any other provision of law or local ordinance, rule, regulation, or initiative measure, the operator shall be entitled to recover the surcharge collected pursuant to

subdivision (a) from its customers. However, the charge to any customer, to allow for the operator's recovery, shall not exceed the actual surcharge.

(c) The board, pursuant to Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code, shall annually transfer funds from the Propane Safety Inspection and Enforcement Trust Fund and shall deposit them in the Public Utilities Commission's Utilities Reimbursement Account in the General Fund, which shall be used, upon appropriation, for the purposes of this chapter.

4459. The commission may adopt rules and orders to carry out this chapter.

4460. (a) In each distribution system, the operator shall post on the premises the current emergency telephone numbers for, at a minimum, the operator, supplier, the fire department, and the responsible person as defined by Section 18603 of the Health and Safety Code, and shall maintain on the premises a copy of an emergency procedures that shall be used in the event there is a propane leak or other safety hazard in the distribution system. The operator shall inform each of the customers of the location of these emergency telephone numbers and the emergency procedure.

(b) Any operator who fails to comply with subdivision (a) shall be subject to the same penalty as set forth in subdivision (a) of Section 4457. The commission shall enforce this subdivision pursuant to subdivision (b) of Section 4457.

4461. Prior to January 1, 1996, the Occupational Safety and Health Standards Board shall adopt by reference the 1992 edition of NFPA 58 Standard for the Storage and Handling of Liquified Petroleum Gasses, or as that 1992 edition may be subsequently amended or supplemented. It is the intent of the Legislature that the NFPA 58 Standard supersede any inconsistent state standards, including, but not limited to, Sections 470 to 494, inclusive, of Chapter 4 of Title 8 of the California Administrative Code. Nothing in this section prohibits the Occupational Safety and Health Standards Board from adopting more stringent standards than those in NFPA 58.

SEC. 2. Part 21 (commencing with Section 42000) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 21. PROPANE SAFETY INSPECTION AND ENFORCEMENT PROGRAM SURCHARGE AND TRUST FUND

42000. As used in this part:

(a) "Board" means the State Board of Equalization.

(b) "Commission" means the California Public Utilities Commission.

(c) "Trust fund" means the Propane Safety Inspection and Enforcement Program Trust Fund.

(d) "Distribution system" means a system of pipes, operated by a person or corporation other than a public utility, serving 10 or more

customers, within a citywide area, an apartment house, a condominium, a cluster of homes, a shopping center, a combination of any of this above, or a mobilehome park with two or more customers, which is connected to a tank or tanks, for the purpose of distribution of propane to the end customers.

(e) "Operator" means the owner of the mobilehome park or the distribution system, or the designated responsible employee, manager, or legal representative.

(f) "Tank" means a vessel for the storage and distribution of propane.

(g) "Propane" means propane gas, also known as liquid petroleum gas, or LPG.

42001. (a) This chapter hereby creates a trust fund known as Propane Safety Inspection and Enforcement Program Trust Fund. The trust fund shall be administered by the board.

(b) The trust fund shall be used to fully support the funding requirements of the propane safety program of the commission pursuant to Chapter 4.1 (commencing with Section 4451) of Division 2 of the Public Utilities Code.

(c) The trust fund shall also be used to fully support the administrative expenses incurred by the board in its task of administrating the trust fund.

42003. (a) The board, together with the commission, shall establish a uniform billing per gallon of propane sold (or, alternatively, per space or customer served) surcharge to by paid by operators. The surcharge shall be designed to support the commission's propane safety program for multicustomers' systems pursuant to Section 4458 of the Public Utilities Code, as well as to recover the board's costs in administering the trust fund. The surcharge shall be collected from the operators, and deposited into the trust fund. In the case of a mobilehome park, the surcharge shall be assessed on a per space or lot basis, shall not exceed twenty-five cents ($0.25) per month, and shall not be collected by the board on less than a quarterly basis.

(b) The board shall annually transfer funds from the trust fund and shall deposit them in the commission's Utilities Reimbursement Account in the General Fund, which shall be used upon appropriation by the Legislature, for the purposes of Chapter 4.1 (commencing with Section 4451) of Division 2 of the Public Utilities Code.

(c) The board shall annually transfer funds from the trust fund and shall deposit them in the board's Reimbursement Account in the General Fund, which shall be used, upon appropriation by the Legislature, for the purposes of administering the trust fund.

42004. (a) The board, in administering the trust fund, shall be responsible for identification of the pertinent operators, for the collection of the surcharges from the operators, and for disbursement of the funds. The commission shall assist the board in identifying the operators.

(b) The board may use a balancing account, in conjunction with the trust fund, to account for any overcollection or undercollection on a yearly basis.

(c) The board's administrative responsibility and surcharge collection shall exempt all propane used by the following:

(1) Agricultural, commercial serving less than 10 customers, industrial, and refinery systems.

(2) Recreational vehicles and appliances.

(3) Vehicular fuel.

(4) Single customers served by single tanks.

(5) Multicustomer systems, other than mobilehome parks, which serve less than 10 customers.

(6) Cylinder exchange operations.

(d) The board may adopt rules and orders to carry out this chapter. However, on matters that involve setting surcharges and identification of operators, the board shall coordinate with the commission to set the proper policy and procedures.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 389

An act to amend Sections 22754.35, 68112, 68113, 68502.5, 69753, 71341, 72190, 77203, and 77205.1 of, to add Sections 22754.3, 68114.9, 68502.7, 77203.6, 77300, and 77301 to, and to repeal Sections 74191.5, 74198, 74199, and 74200 of, the Government Code, and to add Section 1462.25 to the Penal Code, relating to courts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 22754.3 is added to the Government Code, to read:

22754.3. Any person who retired under the Judges' Retirement System as a municipal or justice court judge, or eligible surviving spouse or dependent of such a person, or any municipal or justice court judge who separated on deferred retirement status pursuant to

Section 75033 or 75033.5 prior to July 21, 1994, shall be entitled to enroll himself or herself in any health plan provided under this part without restriction, provided that person enrolls on or before December 31, 1994. Neither the system, the state, nor the employer shall have any obligation to seek out and notify potentially eligible enrollees. All such enrollees shall be subject to all of the terms and conditions of this part and any regulations adopted pursuant thereto.

SEC. 2. Section 22754.35 of the Government Code is amended to read:

22754.35. (a) As used in this part, "employee" includes any judge of a municipal or justice court.

(b) As used in this part, "annuitant" includes any judge of a municipal or justice court retired under the Judges' Retirement System.

(c) For purposes of this part, a municipal or justice court judge's entitlement shall be the same as a superior court judge in terms of health benefits and employer contributions, and the continuation of health benefits coverage shall be administered by the board.

(d) The state shall provide each sitting and retired municipal court and justice court judge with health, dental, and vision care benefits equal to and in the same manner as the health, dental, and vision care benefits provided to superior court judges. These benefits shall be paid from funds provided pursuant to Section 77006.5.

(e) No judge shall have any salary or benefits reduced solely by reason of the enactment of this section.

(f) If a judge opts to receive health, dental, or vision care benefits from the state, the county shall reduce the judge's compensation by an amount equal to the amount the state pays for his or her health, dental, or vision care benefits.

SEC. 3. Section 68112 of the Government Code is amended to read:

68112. (a) On or before March 1, 1992, each superior, municipal, and justice court in each county, in consultation with the local bar, shall prepare and submit to the Judicial Council for review and approval a trial court coordination plan designed to achieve maximum utilization of judicial and other court resources and statewide cost reductions in court operations of at least 3 percent in the 1992–93 fiscal year, a further 2 percent in the 1993–94 fiscal year, and a further 2 percent in the 1994–95 fiscal year, as applicable. The cost reduction shall be based on the prior year actual expenditures, plus any amount reduced from the budget for court operations by a county as a result of any reduction in state funding made pursuant to Section 13308, increased by the percentage change in population for the prior calendar year and the Department of Commerce implicit price deflator for state and local government for the prior calendar year. The coordination plan for each court shall be reviewed and approved by the Judicial Council on or before July 1, 1992. Thereafter, commencing in 1995 each court shall submit an updated coordination plan to the Judicial Council every other year

on or before March 1, for review and approval by July 1. Any plan disapproved by the Judicial Council shall be revised and resubmitted within 60 days of notification of disapproval. The Judicial Council may by rule exempt any court from the requirement of filing a new coordination plan for any year if the court has (1) totally consolidated administrative functions under a single administrative entity, and (2) adopted and implemented a coordination plan in which the participating superior court and each participating municipal court share each other's work so that cases in the participating courts are substantially assigned without regard to whether a judge is on the superior court or the municipal court, and which provides for procedures that implement that sharing of work.

(b) The coordination plan shall take into consideration the elements of those plans specified in standards adopted by the Judicial Council and applicable case processing time standards adopted by the Judicial Council. The standards adopted by the Judicial Council shall include, but not be limited to, the following:

(1) The use of blanket cross-assignments allowing judges to hear civil, criminal, or other types of cases within the jurisdiction of another court.

(2) The coordinated or joint use of subordinate judicial officers to hear or try matters.

(3) The coordinated, joint use, sharing or merger of court support staff among trial courts within a county or across counties. In a county with a population of less than 100,000 the coordination plan need not involve merger of superior and justice court staffs if the court can reasonably demonstrate that the maintenance of separate administrative staffs would be more cost-effective and provide better service.

(4) The assignment of civil, criminal, or other types of cases for hearing or trial, regardless of jurisdictional boundaries, to any available judicial officer.

(5) The assignment of any type of case to a judge for all purposes commencing with the filing of the case and regardless of jurisdictional boundaries.

(6) The establishment of separate calendars or divisions to hear a particular type of case.

(7) In rural counties, the use of all court facilities for hearings and trials of all types of cases and to accept for filing documents in any case before any court in the county participating in the coordination plan.

(8) The coordinated or joint use of alternative dispute resolution programs such as arbitration.

(9) The unification of the trial courts within a county to the maximum extent permitted by the Constitution.

(10) The joint development of automated accounting and case-processing systems, including joint use of moneys available under Section 68090.8.

(c) In preparing coordination plans a court or courts in a county

may petition the Judicial Council to permit division of the court or courts into smaller administrative units where a courtwide plan would impose an undue burden because of the number of judges or the physical location of the divisions of the court or courts.

(d) In preparing coordination plans, the courts are strongly encouraged to develop a plan that includes all superior, municipal, and justice courts in the county.

SEC. 4. Section 68113 of the Government Code is amended to read:

68113. (a) The superior, municipal, and justice courts in each county shall submit a report to the Judicial Council on progress towards achieving the cost reduction goals associated with the coordination plans and factors impacting the cost of court operations and the collection of revenues. The report shall also include financial information prepared by the county auditor on expenditures for court operations and revenues according to a uniform chart of accounts adopted by the Judicial Council. The reports shall be submitted quarterly on or before the first day of the third month following the end of the quarter, except the fourth-quarter report shall be submitted on the first day of the fourth month following the end of the fourth quarter.

(b) For purposes of the reporting requirements of this section, a court or courts in a county may petition the Judicial Council to permit division of the court or courts into smaller administrative units corresponding to the organization of the court or courts under a coordination plan where reporting courtwide would impose an undue burden because of the number of judges or the physical location of the divisions of the court or courts.

(c) The Judicial Council shall submit a report to the Legislature on or before November 1 following the end of each fiscal year setting forth all of the following:

(1) The revenues and expenditures for each superior, municipal, and justice court in the state and statewide totals.

(2) A summary of the savings achieved by each county and statewide.

(3) Factors impacting the cost of court operations and the collection of revenues.

SEC. 5. Section 68114.9 is added to the Government Code, to read:

68114.9. To facilitate implementation of a coordination plan approved pursuant to Section 68112:

(a) The clerk of the municipal court may authorize personnel of the municipal court to be cross-deputized by the clerk of the superior court to perform comparable court duties. Personnel deputized pursuant to this section shall serve without additional compensation.

(b) The clerk of the superior court may authorize personnel of the clerk of the superior court to be cross-deputized by the clerk of the municipal court to perform comparable court duties. Personnel deputized pursuant to this section shall serve without additional

compensation.

SEC. 6. Section 68502.5 of the Government Code is amended to read:

68502.5. (a) The Judicial Council shall provide by rule for the appointment of a standing Trial Court Budget Commission and the deadlines for meeting its various responsibilities. The commission shall have the authority to:

(1) Receive budget requests from the trial courts. Trial courts shall send to the county board of supervisors a copy of their proposed budgets and any revisions or appeals at the time their budget requests are submitted to the Trial Court Budget Commission, pursuant to this section. The counties may submit timely comments to the commission regarding the contents of the proposed budgets of their respective trial courts. The commission shall consider the counties' comments when determining appropriate budgets for the courts.

(2) Review the trial courts' budget requests and evaluate them against performance criteria established by the Judicial Council by which a court's performance, level of coordination, and efficiency can be measured.

(3) Annually recommend to the Judicial Council for its approval the projected cost in the subsequent fiscal year of court operations as defined in Section 77003 for each trial court. This estimation shall serve as the basis for court budgets, which shall be developed programmatically by court function, as approved by the Judicial Council, for comparison purposes and to delineate the funding responsibilities.

(4) Annually prepare a recommended schedule for the allocation of moneys to individual courts and a recommended overall trial court budget for approval by the Judicial Council and forwarding to the Governor for inclusion in the Governor's proposed State Budget. The recommended schedule shall be based on the performance criteria established pursuant to paragraph (2) and on a minimum standard established by the Judicial Council for the operation and staffing of all trial court operations. This minimum standard shall be modeled on court operations using all reasonable and available measures to increase court efficiency and coordination. The schedule of allocations shall assure that all trial courts receive funding for the minimum operating and staffing standards before funding operating and staffing requests above the minimum standards, and shall include incentives and rewards for any trial court's implementation of efficiencies and cost saving measures.

(5) Reallocate funds in accordance with Judicial Council rules during the course of the fiscal year to ensure equal access to the trial courts by the public, to improve trial court operations, and to meet trial court emergencies. Reallocations shall be limited to 15 percent of that portion of any court's annual budget amount funded by the state. Neither the state nor the counties shall have any obligation to replace moneys appropriated for trial courts and reallocated

pursuant to this paragraph.

(6) Allocate funds in the Trial Court Improvement Fund in accordance to Judicial Council rules to ensure equal access to trial courts by the public, to improve trial court operations, and to meet trial court emergencies.

(7) Upon approval of the trial courts' budget by the Legislature, prepare during the course of the fiscal year an allocation schedule for quarterly payments to the counties, consistent with Sections 68085 and 77205.1, which shall be submitted to the Controller's office by the 10th day of the month in which payments are to be made.

(8) Establish rules, pursuant to the authority of the Judicial Council, regarding a court's authority to transfer trial court funding moneys from one functional category to another in order to address needs in any functional category.

(9) At the request of the presiding judge of a trial court, conduct an independent review of the funding level of the court to determine whether it is adequate to enable the court to discharge its statutory and constitutional responsibilities.

(10) From time to time, review the level of fees charged by the courts for various services and prepare recommended adjustments for approval and forwarding to the Legislature by the Judicial Council.

(b) Members of the commission shall receive no compensation from the state for their services. When called into session, they shall receive their actual and necessary expenses for travel, board, and lodging, which shall be paid from the funds appropriated for this use. These expenses shall be appropriated in the manner as the Judicial Council directs, and shall be audited by the Controller in accordance with the rules of the State Board of Control.

SEC. 7. Section 68502.7 is added to the Government Code, to read:

68502.7. Nothing in this chapter shall be construed to require the state in any fiscal year to provide money for trial court costs from any state fund that is in excess of the total amount available for disbursement from that fund during the fiscal year. The Trial Court Budget Commission may reallocate moneys pursuant to Section 68502.5 if at any time during the fiscal year it determines that the amount available for disbursement from any state fund will be less than or greater than the amount already allocated from that fund for that fiscal year.

SEC. 8. Section 69753 of the Government Code is amended to read:

69753. (a) Notwithstanding any other provision of this code, the presiding or sole judge of a superior court may, if the session is held in furtherance of a coordination plan approved under Section 68112 or in the absence of a timely objection in a civil case or proceeding or with the express consent of the parties in a criminal action, direct that a session of the court be held at any place in the county where a municipal or justice court regularly conducts sessions, if:

(1) The judge presiding at the superior court session is a judge of a municipal or justice court or a retired judge assigned to serve as a superior court judge under Section 6 of Article VI of the California Constitution.

(2) The presiding or sole judge of the municipal or justice court has informed the presiding judge of the superior court that the superior court session will not interfere with the normal conduct of municipal or justice court business.

(b) The Judicial Council shall provide by rule for the timely filing of any objection to hearing a civil matter at a municipal or justice court location, and for obtaining the consent of the parties in a criminal action.

SEC. 9. Section 71341 of the Government Code is amended to read:

71341. (a) Sessions of a municipal or justice court may be held at any place or places within the district for which the court is established. The board of supervisors shall designate by ordinance the place or places within the district where sessions of the justice court shall be held. It may change the places if public convenience requires.

(b) Notwithstanding any other provision of law, the presiding or sole judge of a municipal or justice court may direct that a session of the court be held at any place in the county where any superior, municipal, or justice court regularly conducts sessions, if each of the following applies:

(1) The judge presiding at the court session is a judge of a municipal or justice court or a retired judge assigned to serve as a municipal or justice court judge under Section 6 of Article VI of the Constitution.

(2) The presiding or sole judge of the superior, municipal, or justice court has informed the presiding judge of the municipal or justice court that the court session will not interfere with the normal conduct of court business.

(3) The session is held in furtherance of a coordination plan approved under Section 68112.

Any type of proceeding may be heard in these sessions.

SEC. 10. Section 72190 of the Government Code is amended to read:

72190. Within the jurisdiction of the court and under the direction of the judges, commissioners of municipal courts or justice courts shall exercise all the powers and perform all of the duties authorized by law to be performed by commissioners of superior courts and such additional powers and duties as may be prescribed by law. At the direction of the judges, commissioners may have the same jurisdiction and exercise the same powers and duties as the judges of the court with respect to any infraction or small claims action. The commissioners of municipal courts or justice courts shall possess the same qualifications the law requires of a judge and shall hold office during the pleasure of the court appointing them and

shall not engage in the private practice of law. They shall be ex officio deputy clerks.

Notwithstanding any other provision of law, a commissioner of a municipal court or a justice court of any judicial district in this state who has been duly appointed and has thereafter been retired for service, or a commissioner of a superior court in this state who has been duly appointed and has thereafter been retired from service, may be assigned by the presiding judge or sole judge of a municipal court or a justice court to serve as a court commissioner of the court for any periods of time as he or she is needed for the prompt and efficient discharge of the business of that court. While serving, he or she shall be paid the full compensation of a court commissioner, payable as follows: he or she shall continue to receive his or her retirement allowance, and in addition the county shall pay him or her the amount equal to the difference between the retirement allowance and full compensation. That employment shall not operate to reinstate him or her as a member of the county retirement system or to terminate or suspend his or her retirement rights or allowance, and no deductions shall be made from his or her compensation as contributions to the retirement system.

SEC. 11. Section 74191.5 of the Government Code is repealed.

SEC. 12. Section 74198 of the Government Code is repealed.

SEC. 13. Section 74199 of the Government Code is repealed.

SEC. 14. Section 74200 of the Government Code is repealed.

SEC. 15. Section 77203 of the Government Code is amended to read:

77203. Reimbursement to a county pursuant to this chapter shall be in lieu of any payment for any prior or current program for which reimbursement of state-mandated local programs for the trial courts is claimed, and any payment as provided in Section 77203.6. No claim for reimbursement of a state-mandated local program may be made by an option county for any cost of court operations, nor may any claim be made for state-mandated local programs arising from the enactment of the Trial Court Realignment and Efficiency Act of 1991 (Chapter 90 of the Statutes of 1991) as revised by Chapter 189 of the Statutes of 1991 and Chapter 308 of the Statutes of 1994.

SEC. 16. Section 77203.6 is added to the Government Code, to read:

77203.6. (a) The initial decision by a county to accept state funding pursuant to Section 77300 shall constitute a waiver of all claims for reimbursement for state-mandated local programs not previously approved by the State Board of Control, the Commission on State Mandates, or the courts to the extent the Governor, in his or her discretion, determines that waiver to be appropriate. However, a decision by a county to opt into the system pursuant to Section 77300 beginning with the second half of the 1988–89 fiscal year shall not constitute a waiver of a claim for reimbursement based on a statute chaptered on or before the date the act which added this chapter is chaptered, which is filed in acceptable form on or before

the date the act which added this chapter is chaptered. A county may petition the Governor to exempt any such claim from this waiver requirement; and the Governor, in his or her discretion, may grant the exemption in whole or in part. The waiver shall not apply to or otherwise affect any claims accruing after initial notification. Renewal, renegotiation, or subsequent notification to continue in the program shall not constitute a waiver.

(b) The initial decision by a county to accept state funding pursuant to Section 77300 shall constitute a waiver of any claim, cause of action, or action whenever filed, with respect to the Trial Court Funding Act of 1985, Chapter 1607 of the Statutes of 1985, or Chapter 1211 of the Statutes of 1987.

SEC. 17. Section 77205.1 of the Government Code is amended to read:

77205.1. (a) Upon appropriation by the Legislature, the Controller shall make quarterly payments of trial court funding on or before the 25th day of that quarter. The quarterly apportionment shall be withheld from any county that is delinquent in making the full transfer of funds pursuant to Section 1463.001 of the Penal Code.

(b) Upon receipt of any delinquent payment, the Controller shall make the quarterly apportionment on or before the 25th day of the month following the month in which the delinquent payment was received from the county. The Controller shall calculate a penalty on any delinquent payment and that amount shall be deducted from the next quarterly apportionment. The penalty shall be calculated by multiplying the amount of the delinquent payment by the Pooled Money Investment Account rate at the end of the prior fiscal year.

(c) Penalty amounts withheld under subdivision (b) shall be allocated by the Judicial Council the following quarter, based upon the recommendations of the Trial Court Budget Commission.

SEC. 18. Section 77300 is added to the Government Code, to read:

77300. (a) A county shall notify the Controller of its decision to accept state funding for a specific fiscal year, on or before March 1 of the preceding fiscal year.

The Controller shall advise the chairpersons of the legislative fiscal committees and the chairperson of the Joint Legislative Budget Committee by March 15 of each year regarding those counties that have notified the state of their decision to opt into the system for the succeeding fiscal year.

(b) However, a county that has reached its constitutional spending limit pursuant to Article XIII B of the California Constitution may notify the state of its decision to accept state funding after a successful override election allowing the county to use state funding for local trial courts, to be effective commencing with the next quarter following notification.

Nothing in this chapter shall be construed to prohibit the state and a county, by mutual agreement between the Director of Finance and the parties signing the resolution accepting state funding, from entering into a two-year term.

By accepting state funding of trial courts, the county agrees to perform all duties and provide services required by this chapter and all other provisions of law.

SEC. 19. Section 77301 is added to the Government Code, to read:

77301. A county shall notify the state of its decision to accept state funding by transmitting to the Controller a resolution agreeing without qualification or condition to be bound by the provisions of this chapter in consideration for state funding of trial courts in that county.

SEC. 20. Section 1462.25 is added to the Penal Code, to read:

1462.25. (a) A defendant formally charged with a violation of Vehicle Code Section 14601 in one court ("the first court"), against whom a formal charge of a violation of Vehicle Code Section 14601 is pending in one or more other courts, may state in writing his or her agreement to plead guilty or nolo contendere to some or all of the charges pending in the other courts, to waive trial or hearing in the other courts, and to consent to disposition of the case in the first court. The defendant's agreement is ineffective unless the district attorney for the other county approves in writing. Upon receipt of the defendant's agreement and the district attorney's approval, the clerk of court in the other court shall transfer the pending matter to the first court, and transmit the papers or certified copies. The prosecution of each transferred matter shall proceed in the first court as part of the case pending against the defendant there, but shall be limited to proceedings upon the defendant's plea of guilty or nolo contendere, and sentencing or probation. If the defendant pleads not guilty, the clerk shall retransfer the transferred case to the court of origin, and the prosecution shall be resumed in that court. The defendant's statement that the defendant agreed to plead guilty or nolo contendere shall not be used against the defendant.

(b) The procedure specified in subdivision (a) may be used only if the defendant is represented by counsel in the other courts, or the defendant has expressly waived his or her right to counsel in the other courts.

(c) A defendant may request appointment of counsel in the other courts by a written request. Upon receiving the defendant's written request, the other court shall appoint counsel to represent the defendant if he or she otherwise qualifies for appointed counsel.

(d) The appearance of the defendant in proceedings transferred pursuant to subdivision (a) shall not commence the running of time limits under Section 859b, 860, 861, or 1382.

SEC. 21. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 22. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide adequate trial court funding for the 1994–95 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 390

An act to amend Section 69955 of the Government Code, relating to court reporters.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 69955 of the Government Code is amended to read:

69955. (a) As used in this section, "reporting notes" are the reporting notes of all court reporters employed to report in the courts of California, who may be known as official and pro tempore court reporters. Reporting notes are official records of the court. Reporting notes shall be kept by the reporter taking the notes in a place designated by the court, or, upon order of the court, delivered to the clerk of the court.

(b) The reporting notes may be kept in any form of communication or representation including paper, electronic, or magnetic media or other technology capable of reproducing for transcription the testimony of the proceedings according to standards or guidelines for the preservation and reproduction of the medium adopted by the American National Standards Institute or the Association for Information and Image Management. Reporting notes shall be stored in an environment free from excessive moisture, temperature variation, and electromagnetic fields if stored on a medium other than paper.

(c) The reporting notes shall be labeled with the date recorded, the department number of the court, and the name of the court reporter. The reporting notes shall be indexed for convenient retrieval and access. Instructions for access to data stored on a medium other than paper shall be documented.

(d) If the reporting notes are kept in any form other than paper, one duplicate backup copy of the notes shall be stored in a manner and place that reasonably assures its preservation.

(e) Reporting notes produced under subdivision (b) may be destroyed upon the order of the court after 10 years from the taking of the notes in criminal proceedings and after five years from the taking of the notes in all other proceedings, unless the notes report proceedings in capital felony cases including the preliminary hearing. No reporting notes in a capital felony case proceeding shall be destroyed until such time as the Supreme Court on request by the court clerk authorizes the destruction.

(f) A periodic review of the media on which the reporting notes are stored shall be conducted to assure that a storage medium is not obsolete and that current technology is capable of accessing and reproducing the records for the required retention period.

(g) If the reporting notes of an official or pro tempore court reporter have not been delivered to the clerk of the court, the notes shall be delivered by the reporter to the clerk of the court upon the reporter's retirement, resignation, dismissal, termination of appointment, or in the case of any other absence for a period of more than 30 days or longer as designated by the court. Upon the order of the court, the notes shall be returned to the reporter upon the reporter's return from such absence. In the event of the reporter's death, the notes shall be delivered to the clerk of the court by the reporter's personal representative.

(h) If reporting notes delivered to the clerk of the court are to be transcribed, the court reporter who took the notes shall be given the first opportunity to make the transcription, unless the reporter cannot be located, refuses to transcribe the notes, or is found to be incompetent to transcribe the notes.

(i) A court reporter shall be reimbursed for the actual cost of the medium on which the reporting notes are kept, whether on paper, diskette, or other media in compliance with this section.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 391

An act to amend Section 4 of Chapter 620 of the Statutes of 1989, to amend Section 3 of Chapter 625 of the Statutes of 1991, and to repeal Section 9 of Chapter 620 of the Statutes of 1989, relating to state real property.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, lease, or transfer for current market value or for any lesser consideration authorized by law and upon those terms and conditions and subject to those reservations and exceptions as the Director of General Services determines are in the best interest of the state, all or any part of the following real property:

Parcel 1. Approximately 0.45 acre, with a structure used by the State Board of Equalization, located at 233 North Second Street, Covina, Los Angeles County.

Parcel 2. Approximately 0.53 acre of vacant land adjacent to the California Highway Patrol Office located at 430 South Broadway, Blythe, Riverside County.

Parcel 3. Approximately 0.47 acre, with structures used by the California Highway Patrol, located at 86 West Main Street, Quincy, Plumas County.

Parcel 4. Approximately 0.57 acre, with a structure used by the Employment Development Department, located at 1640 West "F" Street, Oakdale, Stanislaus County.

Parcel 5. Approximately 1.84 acres of unimproved land adjacent to the Employment Development Department Office, located at 2348 Baldwin Avenue, Oroville, Butte County.

Parcel 6. Approximately 3.17 acres of improved land, being a portion of the California State Prison at Folsom, Sacramento County.

SEC. 2. The Director of General Services, with the approval of the State Public Works Board and the Director of Parks and Recreation, is hereby authorized to exchange with the County of Del Norte, approximately 17 acres of vacant state land at Lakes Earl and Talawa for adjoining county land of similar size and value, upon those terms and conditions and subject to those reservations and exceptions as the Director of General Services determines to be in the best interest of the state.

SEC. 3. (a) Notices of every public auction or bid opening shall be posted on the property to be sold under this act and shall be published in a newspaper of general circulation published in the county in which the real property to be sold is situated.

(b) Any sale, exchange, lease, or transfer of the parcels described

in this act is exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

SEC. 4. (a) The Department of General Services shall be reimbursed for any cost or expense incurred in the disposition of any parcels.

(b) The net proceeds of any moneys received from the disposition of any parcels described in this act shall be deposited in the General Fund and be available for appropriation in accordance with Section 15863 of the Government Code, except as follows:

(1) The net proceeds received from the disposition of Parcels 2 and 3 in Section 1 shall be deposited in the Motor Vehicle Account in the State Transportation Fund.

(2) The net proceeds received from the disposition of Parcels 4 and 5 in Section 1 shall be deposited in the Employment Development Department Building Fund.

SEC. 5. As to any property sold pursuant to this act consisting of 15 acres or less, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry. As to property sold pursuant to this act consisting of more than 15 acres, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove the deposits. The rights to prospect for, mine, and remove the deposits shall be limited to those areas of the property conveyed that the director, after consultation with the State Lands Commission, determines to be reasonably necessary for the removal of the deposits.

SEC. 6. Section 4 of Chapter 620 of the Statutes of 1989 is amended to read:

Sec. 4. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, or lease for current market value or for any lesser consideration authorized by law and upon such terms and conditions and subject to such reservations and exceptions as the Director of General Services determines are in the best interests of the state, all or any part of the following real property:

PARCEL 1. Approximately 0.5 acre, consisting of a vacant parcel adjoining the campus of California State University, San Bernardino, and fronting on North Park Circle near its intersection with State College Parkway in the City of San Bernardino.

PARCEL 2. Approximately 0.4 acre with a structure, known as the Paskenta Residence of the Department of Forestry and Fire Protection and fronting on Toomes Camp Road near its intersection with Mountain View Road in Tehama County.

PARCEL 3. Approximately 2.68 acres in two parcels known as Rio Vista North Fishing Access No. 1 of the Department of Fish and Game and lying between State Highway Route 84 and the

Sacramento River downstream of its confluence with Cache Slough and Steamboat Slough in Solano County.

PARCEL 4. Approximately 1.0 acre known as Rio Vista North Fishing Access No. 2 of the Department of Fish and Game and fronting on the west side of State Highway Route 84 and the Sacramento River downstream of its confluence with Cache Slough and Steamboat Slough in Solano County.

PARCEL 5. Approximately 2.22 acres, consisting of part of the Los Ranchos Wildlife Area of the Department of Fish and Game fronting on the eastern right-of-way of State Highway Route 227 near its intersection with the right-of-way of the Southern Pacific Transportation Company in San Luis Obispo County near the unincorporated community of Edna.

PARCEL 6. Approximately 0.86 acre with a structure utilized as office space by the Department of Motor Vehicles and known as 379 Colusa Avenue, Yuba City.

PARCEL 7. Approximately 4.5 acres, being the Military Department's Manhattan Beach Armory located at 3601 Bell Avenue, Manhattan Beach. This parcel shall not be disposed of, however, until the City of Manhattan Beach amends its zoning ordinance to rezone approximately 2.5 acres of this parcel as R-1, and the Adjutant General determines that operations of the Military Department conducted on this parcel can be relocated to alternative facilities at another location. Upon both these conditions being satisfied, the Department of General Services shall, notwithstanding Section 11011.1 of the Government Code, convey to the City of Manhattan Beach, for municipal purposes only and at no cost to the city, the remaining part of this parcel that was not rezoned to R-1.

PARCEL 9. Approximately 0.13 acre, consisting of an unimproved, subdivided lot fronting on Palisades Beach Road immediately adjacent to Santa Monica State Beach.

PARCEL 10. Approximately 0.12 acre, consisting of an unimproved, subdivided lot fronting on Palisades Beach Road immediately adjacent to Santa Monica State Beach.

PARCEL 11. Approximately 0.23 acre, consisting of an unimproved, subdivided lot fronting on Palisades Beach Road immediately adjacent to Santa Monica State Beach.

SEC. 7. Section 9 of Chapter 620 of the Statutes of 1989 is repealed.

SEC. 8. Section 3 of Chapter 625 of the Statutes of 1991 is amended to read:

Sec. 3. The Director of General Services, with the approval of the State Public Works Board, may sell or lease for current market value only, all or any part of the following property:

Parcel 2. Approximately 1.07 acres, with a structure used by the Employment Development Department, located at 1313 Pine Avenue, Long Beach, Los Angeles County.

Parcel 3. Approximately 0.43 acre, with a structure used by the Employment Development Department, located at 660 Tule Street,

Mendota, Fresno County.

Parcel 4. Approximately 1.1 acres, with a structure used by the Employment Development Department, located at 480 Mountain View Avenue, San Bernardino, San Bernardino County.

Parcel 5. Approximately 0.18 acre, with a structure used by the Employment Development Department, located at 500 North Garden, Visalia, Tulare County.

Parcel 6. Approximately 1.46 acres, with a structure used by the Employment Development Department, located at 100 North Imperial Avenue, El Centro, Imperial County.

Parcel 7. Approximately 0.63 acre, with a structure used by the Employment Development Department, located at 240 West 7th Street, Chico, Butte County.

Parcel 8. Approximately 1.17 acres, with a structure used by the Employment Development Department, located at 346 Front Street, Salinas, Monterey County.

Parcel 9. Approximately 0.85 acre with a structure used by the Employment Development Department, located at 805 R Street, Sacramento, Sacramento County.

SEC. 9. The authorization for disposal of the following properties is rescinded by Sections 6 to 8, inclusive, of this act, as the concerned state agencies have reported that the properties are no longer considered surplus:

(a) Parcel 8 of Section 4 of Chapter 620 of the Statutes of 1989.

(b) The property described in Section 9 of Chapter 620 of the Statutes of 1989.

(c) Parcel 1 of Section 3 of Chapter 625 of the Statutes of 1991.

CHAPTER 392

An act to amend Section 25600 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 25600 of the Business and Professions Code is amended to read:

25600. (a) (1) No licensee shall, directly or indirectly, give any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage, except as provided by rules that shall be adopted by the department to implement this section or as authorized by this division.

(2) (A) Notwithstanding paragraph (1), for purposes of this section, a refund to, or exchange of products for, a dissatisfied consumer by a licensee authorized to sell to consumers shall not be

deemed a premium, gift, or free goods given in connection with the sale or distribution of an alcoholic beverage.

(B) A winegrower may advertise or otherwise offer consumers a guarantee of product satisfaction only in newsletters or other publications of the winegrower or at the winegrower's premises. A winegrower may refund to a dissatisfied consumer the entire purchase price of wine produced by that winegrower and sold to that consumer, regardless of where the wine was purchased.

(b) No rule of the department may permit a licensee to give any premium, gift, or free goods of greater than inconsequential value in connection with the sale or distribution of beer. With respect to beer, premiums, gifts, or free goods, including advertising specialties that have no significant utilitarian value other than advertising, shall be deemed to have greater than inconsequential value if they cost more than twenty-five cents ($0.25) per unit, or cost more than fifteen dollars ($15) in the aggregate for all those items given by a single supplier to a single retail premises per calendar year.

(c) With respect to distilled spirits and wines, a licensee may furnish, give, rent, loan, or sell advertising specialties to a retailer provided those items bear conspicuous advertising required of a sign and the total value of all retailer advertising specialties furnished by a supplier, directly or indirectly, to a retailer shall not exceed fifty dollars ($50) per brand in any one calendar year per retail premises. The value of a retailer advertising specialty is the actual cost of that item to the supplier who initially purchased it. Transportation and installation costs are excluded. The furnishing or giving of any retailer advertising specialty shall not be conditioned upon the purchase of the suppliers' product. Retail advertising specialties given or furnished free of charge may not be sold by the retail licensee.

CHAPTER 393

An act to add Section 6073.2 to the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 6073.2 is added to the Revenue and Taxation Code, to read:

6073.2. (a) Section 6073 shall not apply to any of the following:

(1) An event or show for which all exhibitors' contracts prohibit any sale of tangible personal property at the event or show and at which no tangible personal property is actually sold.

(2) An event or show that is conducted for informational or educational purposes only, and at which no sales of tangible personal property occur.

(3) A trade show.

(b) For purposes of this section, a "trade show" means an event or show that complies with all of the following conditions:

(1) The event or show is not open to the general public for any portion of the show.

(2) Only orders for tangible personal property are solicited or taken during the event or show from sellers, as defined in Section 6014, for purposes of subsequent resale.

(3) The event or show is operated by an organization that qualifies for tax exempt status under Section 501(c) of the Internal Revenue Code.

(c) When the board determines it is necessary for the efficient administration of this part, the board may require the operator of a trade show, within 10 days from the close of that show, to provide the board with a listing of the names and addresses of the agents or representatives soliciting orders at the trade show, and their principals, including, but not limited to, manufacturers, wholesalers, distributors, or suppliers.

(d) Any operator of a trade show who willfully fails or refuses to comply with subdivision (c) is subject to a penalty in an amount not to exceed one thousand dollars ($1,000) for each offense.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for operators of special events or trade shows to hold those events or shows in California under circumstances in which they can successfully compete with those events or shows held in other states, it is necessary that this act take effect immediately.

CHAPTER 394

An act to amend Sections 23661.2 and 25503.4 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 23661.2 of the Business and Professions Code is amended to read:

23661.2. (a) Notwithstanding any other provision of law, any unlicensed adult resident of California may apply to the Department of Alcoholic Beverage Control and be issued a permit to receive a

shipment of wine, including vermouth and champagne, from any state of the United States that allows adult residents of that state to receive by permit of nominal cost shipments of no less than nine liters of wine, including vermouth and champagne, per month from California. The shipment into this state shall be made in accordance with rules adopted by the department, but the total shipments permitted in any calendar month to a person shall not be in excess of nine liters. A common carrier to whom the permit is presented is authorized to make delivery of the shipment to the person named in the permit. Delivery of a shipment pursuant to the permit shall not be deemed to constitute a sale in this state.

(b) Notwithstanding any other provision of law, an individual or licensee in a state that affords California licensees or individuals an equal reciprocal shipping privilege, may ship, for personal use and not for resale, no more than two cases of wine (no more than nine liters each case) per month to any adult resident in this state. Delivery of a shipment pursuant to this subdivision shall not be deemed to constitute a sale in this state.

The shipping container of any wine sent into or out of this state under this section shall be clearly labeled to indicate that the package cannot be delivered to a minor or to an intoxicated person.

SEC. 2. Section 25503.4 of the Business and Professions Code is amended to read:

25503.4. (a) Notwithstanding any other provision of this division, a winegrower, California winegrower's agent, wine importer, or any director, partner, officer, agent, or representative of that person, may conduct or participate in, and serve wine at, an instructional event for consumers held at a retailer's premises featuring wines produced by or for the winegrower or, imported by the wine importer, subject to the following conditions:

(1) No premium, gift, free goods, or other thing of value shall be given away in connection with the instructional event by the winegrower, California winegrower's agent, wine importer, or retailer, except as authorized by this division.

(2) No alcoholic beverages shall be given away in connection with the instructional event; provided, however, that wine, taken from barrels or from tanks, may be sampled at the instructional event. For the purposes of this section, minimal amounts of the samples provided for tasting at the instructional event in addition to the wines being featured shall not constitute a thing of value.

(b) Notwithstanding any other provision of this division, a winegrower, California winegrower's agent, or wine importer, in advance of an instructional event for consumers being held at a retailer's premises, may list in an advertisement the name and address of the retailer, the names of the wines being featured at the instructional event, and the time, date, and location of, and other information about, the instructional event, provided:

(1) The advertisement does not also contain the retail price of the wines.

(2) The listing of the retailer's name and address is the only reference to the retailer in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole. Pictures or illustrations of the retailer's premises and laudatory references to the retailer in such advertisements are not hereby authorized.

(c) Notwithstanding any other provision of this division, the name and address of a winegrower, wine importer, or winegrower's agent licensee, the brand names of wine being featured, and the time, date, location, and other identifying information of a wine promotional lecture at retail premises may be listed in advance of the event in an advertisement of the off-sale or on-sale retail licensee.

(d) Nothing in this section authorizes a winegrower, wine importer, or winegrower's agent licensee to share in the costs, if any, of the retailer licensee's advertisement.

(e) Nothing in this section authorizes any person to consume any alcoholic beverage on any premises licensed with an off-sale retail license.

SEC. 3. It is the intent of the Legislature in enacting Section 1 of this act to encourage the adoption of reciprocal wine shipping privileges legislation in other states for purposes of improving fairness and equity for the small, family vintners and winegrowers of California. Currently, only 12 states have adopted reciprocal wine shipping privileges legislation.

The Legislature encourages the Department of Alcoholic Beverage Control to notify other states of California laws relating to reciprocal wine shipping privileges through established channels of communication.

CHAPTER 395

An act to amend Section 1808.21 of the Vehicle Code, relating to confidential information.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 1808.21 of the Vehicle Code is amended to read:

1808.21. (a) Any residence address in any record of the department is confidential and shall not be disclosed to any person, except a court, law enforcement agency, or other government agency, or as authorized in Section 1808.22.

(b) Release of any mailing address or part thereof in any record of the department may be restricted to a release for purposes related to the reasons for which the information was collected, including, but not limited to, the assessment of driver risk, or ownership of vehicles

or vessels. This restriction does not apply to a release to a court, a law enforcement agency, or other governmental agency, or a person who has been issued a requester code pursuant to Section 1810.2.

(c) Any person providing the department with a mailing address shall declare, under penalty of perjury, that the mailing address is a valid, existing, and accurate mailing address and shall consent to receive service of process pursuant to subdivision (b) of Section 415.20, subdivision (a) of Section 415.30, and Section 416.90 of the Code of Civil Procedure at the mailing address.

(d) (1) Any registration or driver's license record of a person may be suppressed from any other person, except those persons specified in subdivision (a), if the person requesting the suppression submits verification acceptable to the department that he or she has reasonable cause to believe either of the following:

(A) That he or she is the subject of stalking, as specified in Section 1708.7 of the Civil Code or Section 646.9 of the Penal Code.

(B) That there exists a threat of death or great bodily injury to his or her person, as defined in subdivision (d) of Section 12022.7 of the Penal Code.

(2) Upon suppression of a record, each request for information about that record shall be authorized by the subject of the record or verified as legitimate by other investigative means by the department before the information is released.

(e) Suppression of a record pursuant to subdivision (d) shall occur for one year after approval by the department. Not less than 60 days prior to the date the suppression of the record would otherwise expire, the department shall notify the subject of the record of its impending expiration. The suppression may be continued for a period determined by the department if the person submits verification acceptable to the department that he or she continues to have reasonable cause to believe that he or she is the subject of stalking. The notification shall instruct the person of the method to reapply for record suppression.

For the purposes of subdivisions (d) and (e), "verification acceptable to the department" means recent police reports, court documentation, or other documentation from a law enforcement agency.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district that will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for

reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 396

An act to amend Sections 130051 and 130051.9 of the Public Utilities Code, relating to transportation.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 130051 of the Public Utilities Code is amended to read:

130051. The Los Angeles County Metropolitan Transportation Authority consists of 14 members, as follows:

(a) Five members of the Los Angeles County Board of Supervisors.

The board of supervisors may appoint, as an alternate member to a supervisor, a mayor or member of a city council of any city, other than the City of Los Angeles, within Los Angeles County, or a member of the public. If the number of members of the Los Angeles County Board of Supervisors is increased, the authority shall, within 60 days of the increase, submit a plan to the Legislature for revising the composition of the authority.

(b) The Mayor of the City of Los Angeles or an alternate appointed by the mayor.

(c) Two public members and one member of the City Council of the City of Los Angeles appointed by the Mayor of the City of Los Angeles.

(d) Four members, each of whom shall be a mayor or a member of a city council, appointed by the Los Angeles County City Selection Committee. For purposes of the selection of these four members, the County of Los Angeles, excluding the City of Los Angeles, shall be divided into the following four sectors:

(1) The North County/San Fernando Valley sector.

(2) The Southwest Corridor sector.

(3) The San Gabriel Valley sector.

(4) The Southeast Long Beach sector.

The League of California Cities, Los Angeles County Division, shall define the sectors. Every city within a sector shall be entitled to vote to nominate one or more candidates from that sector for consideration for appointment by the Los Angeles County City Selection Committee. A city's vote shall be weighted in the same proportion that its population bears to the total population of all cities within the sector.

The members appointed pursuant to this subdivision, and their

alternates, shall be appointed by the Los Angeles County City Selection Committee upon an affirmative vote of its members which represent a majority of the population of all cities within the county, excluding the City of Los Angeles.

The members selected by the city selection committee shall serve four-year terms with no limitation on the number of terms that may be served by any individual. The city selection committee may shorten the initial four-year term for one or more of the members for the purpose of ensuring that the members will serve staggered terms.

(e) If the population of the City of Los Angeles, at any time, becomes less than 35 percent of the combined population of all cities in the county, the position of one of the two public members appointed pursuant to subdivision (c), as determined by the Mayor of the City of Los Angeles by lot, shall be vacated, and the vacant position shall be filled by appointment by the city selection committee pursuant to subdivision (d) from a city not represented by any other member appointed pursuant to subdivision (d).

(f) One nonvoting member appointed by the Governor.

SEC. 2. Section 130051.9 of the Public Utilities Code is amended to read:

130051.9. (a) The Los Angeles County Metropolitan Transportation Authority shall appoint a full-time chief executive officer who shall act for the authority under its direction and perform those duties delegated by the authority.

(b) The Los Angeles County Metropolitan Transportation Authority shall appoint a general counsel, inspector general, and board secretary.

(c) The inspector general shall, at a noticed public hearing of the authority, report quarterly on the expenditures of the authority for travel, meals and refreshments, private club dues, membership fees and other charges, and any other expenditures which are specified by the authority.

(d) Any investigatory file compiled by the inspector general is an investigatory file compiled by a local law enforcement agency subject to disclosure pursuant to subdivision (f) of Section 6254 of the Government Code.

CHAPTER 397

An act to add Section 5006.5 to the Vehicle Code, relating to vehicles.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 5006.5 is added to the Vehicle Code, to read:

5006.5. (a) The department may issue, for a fee determined by the department to be sufficient to reimburse the department for actual costs incurred pursuant to this section, distinctive license plates for motor vehicles owned or leased by an officer or a designated employee of a foreign organization recognized by the United States pursuant to the Taiwan Relations Act (22 U.S.C. Sec. 3301 et seq.) when the department is otherwise satisfied that the issuance of the license plates is in order.

(b) The distinctive license plates shall be designed by the department and shall contain the words "Foreign Organization."

(c) The department shall establish procedures for both of the following:

(1) To verify the eligibility of an applicant for plates issued pursuant to this section.

(2) To authorize a recognized foreign organization to apply on behalf of its officers for plates issued pursuant to this section.

CHAPTER 398

An act to add Section 11664 to the Insurance Code, relating to workers' compensation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 11664 is added to the Insurance Code, to read:

11664. (a) This section applies only to policies of workers' compensation insurance.

(b) A notice of nonrenewal shall be in writing and shall be delivered or mailed to the producer of record and to the named insured at the mailing address shown on the policy. Subdivision (a) of Section 1013 of the Code of Civil Procedure shall be applicable if the notice is mailed.

(c) An insurer, at least 30 days, but not more than 120 days, in advance of the end of the policy period, shall give notice of nonrenewal, and the reasons for the nonrenewal, if the insurer intends not to renew the policy.

(d) If an insurer fails to give timely notice required by subdivision (c), the policy of insurance shall be continued, with no change in its premium rate, for a period of 60 days after the insurer gives the notice.

(e) A notice of nonrenewal shall not be required in any of the following situations:

(1) The transfer of, or renewal of, a policy without a change in its terms or conditions or the rate on which the premium is based between insurers which are members of the same insurance group.

(2) The policy has been extended for 90 days or less, if the notice required in subdivision (c) has been given prior to the extension.

(3) The named insured has obtained replacement coverage or has agreed, in writing, within 60 days of the termination of the policy, to obtain that coverage.

(4) The policy is for a period of no more than 60 days and the insured is notified at the time of issuance that it may not be renewed.

(5) The named insured requests a change in the terms or conditions or risks covered by the policy within 60 days prior to the end of the policy period.

(6) The insurer has made a written offer to the insured, within the time period specified in subdivision (c), to renew the policy at a changed premium rate.

(f) This section shall become operative on November 30, 1994, in order to enable employers to be notified of an insurer's intent to nonrenew 30 days prior to January 1, 1995.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Due to the implementation of open rating for workers' compensation insurance on January 1, 1995, it is critical that employers have adequate notice of an insurer's intent to nonrenew workers' compensation insurance. There is no provision of current law to provide that notice.

CHAPTER 399

An act to amend Section 9026.5 of the Government Code, relating to the Legislature, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 9026.5 of the Government Code is amended to read:

9026.5. (a) No television signal generated by the Assembly shall be used for any political or commercial purpose, including, but not limited to, any campaign for elective public office or any campaign supporting or opposing a ballot proposition submitted to the electors.

As used in this section, "commercial purpose" does not include either of the following:

(1) The use of any television signal generated by the Assembly by an accredited news organization or any nonprofit organization for educational or public affairs programming.

(2) As authorized by the Assembly, the transmission by a third party to paid subscribers of an unedited video feed of the television signal generated by the Assembly.

(b) Any person or organization who violates this section is guilty of a misdemeanor.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to authorize the transmission to state offices, media representatives, and others of televised proceedings relating to the budget and other legislative matters during the current calendar year, it is necessary that this act take effect immediately.

CHAPTER 400

An act to amend Section 1645 of the Business and Professions Code, relating to dentistry.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 1645 of the Business and Professions Code is amended to read:

1645. (a) Effective with the 1974 license renewal period, if the board determines that the public health and safety would be served by requiring all holders of licenses under this chapter to continue their education after receiving a license, it may require, as a condition to the renewal thereof, that they submit assurances satisfactory to the board that they will, during the succeeding two-year period, inform themselves of the developments in the practice of dentistry occurring since the original issuance of their licenses by pursuing one or more courses of study satisfactory to the board or by other means deemed equivalent by the board.

The board shall adopt regulations providing for the suspension of the licenses at the end of the two-year period until compliance with the assurances provided for in this section is accomplished.

(b) The board may also, as a condition of license renewal, require licentiates to successfully complete a portion of the required continuing education hours in specific areas adopted in regulations by the board. The board may prescribe this mandatory coursework within the general areas of patient care, health and safety, and law and ethics. The mandatory coursework prescribed by the board shall not exceed fifteen hours per renewal period for dentists, and seven and one-half hours per renewal period for dental auxiliaries. Any mandatory coursework required by the board shall be credited toward the continuing education requirements established by the board pursuant to subdivision (a).

CHAPTER 401

An act to amend Section 302 of the Penal Code, relating to crimes.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 302 of the Penal Code is amended to read:

302. (a) Every person who intentionally disturbs or disquiets any assemblage of people met for religious worship at a tax-exempt place of worship, by profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where the meeting is held, or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment.

(b) A court may require performance of community service of not less than 50 hours and not exceeding 80 hours as an alternative to imprisonment or a fine.

(c) In addition to the penalty set forth in subdivision (a), a person

who has suffered a previous conviction of a violation of this section or Section 403, shall be required to perform community service of not less than 120 hours and not exceeding 160 hours.

(d) The existence of any fact which would bring a person under subdivision (c) or (d) shall be alleged in the complaint, information, or indictment and either:

(1) Admitted by the defendant in open court.

(2) Found to be true by a jury trying the issue of guilt.

(3) Found to be true by the court where guilt is established by a plea of guilty or nolo contendere.

(4) Found to be true by trial by the court sitting without a jury.

(e) Upon conviction of any person under this section for disturbances of religious worship, the court may, in accordance with the performance of community service imposed under this section, consistent with public safety interests and with the victim's consent, order the defendant to perform a portion of, or all of, the required community service at the place where the disturbance of religious worship occurred.

(f) The court may waive the mandatory minimum requirements for community service whenever it is in the interest of justice to do so. When a waiver is granted, the court shall state on the record all reasons supporting the waiver.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 402

An act to amend Sections 19550 and 19554 of the Business and Professions Code, relating to horseracing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 19550 of the Business and Professions Code is amended to read:

19550. (a) The board shall require each licensed racing association that conducts 14 or less weeks of racing to designate 3

racing days, and each licensed racing association that conducts more than 14 weeks of racing to designate five racing days during any one meeting, to be conducted as charity days by the licensee for the purpose of distribution of the net proceeds therefrom to beneficiaries through the distributing agent. For the purposes of this section, a split meeting shall be considered a single meeting and the appropriate number of charity days shall be based on the total weeks of racing allocated for both periods of the meeting.

(b) Notwithstanding subdivision (a) or any other provision of law, no racing association shall be required to pay to a distributing agent for the purpose of distribution to beneficiaries more than an amount equal to two-tenths of 1 percent of the association's total on-track handle on live races conducted by the association at the meeting.

(c) This section does not apply to the California Exposition and State Fair, a county or district agricultural association fair, or to a licensed racing association conducting three weeks of racing or less.

SEC. 2. Section 19554 of the Business and Professions Code is amended to read:

19554. The distributing agent for charity distributions shall always be a nonprofit organization or corporation, or nonprofit organizations or corporations, selected by the licensee of the meeting and approved by the board.

(a) Each distributing agent to be qualified hereunder shall conform to the then existing laws and regulations of this state and the United States, so as to be exempt or be entitled to exemption from the payment of any tax measured by income.

(b) Each distributing agent shall have not less than five trustees or directors. None of the individuals constituting the governing board of trustees or directors of the distributing agent shall be directly connected with, be a stockholder, or have any interest in the racing association that is the licensee of the race meeting. Each of the individual trustees or directors shall be a person who is, at the time, both a resident of this state, and an executive, officer, director, trustee, or member of the governing body or board, by whatever name the governing body or board may be known, of an organization engaged in civic, religious, charitable, educational, or veteran activities in this state.

(c) Each distributing agent shall adopt bylaws, shall provide for election to fill vacancies in the board of directors or trustees, and shall hold at least one meeting each year.

(d) Notwithstanding any other provision of this section, with the approval of the board, a racing association whose board of trustees or directors is precluded by its articles of incorporation, bylaws, or by contract from receiving compensation for services in the capacity of trustee or director may act as its own distributing agent.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure viable horseracing meetings during the 1994 season and thereafter, it is necessary that this act take effect immediately.

CHAPTER 403

An act to add Section 3056 to the Business and Professions Code, relating to optometry.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 3056 is added to the Business and Professions Code, to read:

3056. Notwithstanding any other provision of this chapter, the board may issue a certificate of registration to a person who meets all of the following qualifications:

(a) Has a degree as a doctor of optometry issued by an accredited school or college of optometry.

(b) Is currently licensed in another state.

(c) Is currently a full-time faculty member of an accredited California school or college of optometry and has served in that capacity for a period of at least five continuous years.

(d) Has attained, at an accredited California school or college of optometry, the academic rank of professor, associate professor, or clinical professor, except that the status of adjunct or affiliated faculty member shall not be deemed sufficient.

(e) Has successfully passed the board's jurisprudence examination.

(f) Is in good standing, with no past or pending malpractice awards or judicial or administrative actions.

(g) Has met the minimum continuing education requirements set forth in Section 3059 for the current and preceding year.

(h) Has met the requirements of Section 3041.2 regarding the use of pharmaceutical agents under subdivision (e) of Section 3041.

(i) Has never had his or her license to practice optometry revoked or suspended.

(j) Is not subject to denial based on any of the grounds listed in Section 480.

(k) Pays an application fee in an amount equal to the application fee prescribed by the board pursuant to Section 3152.

(*l*) Files an application on a form prescribed by the board.

Any certificate of registration issued pursuant to this section shall expire as provided in Section 3146, and may be renewed as provided in this chapter, subject to the same conditions as other certificates of registration issued under this chapter.

CHAPTER 404

An act to amend Sections 42238.2 and 42238.3 of the Education Code, relating to education funding.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 42238.2 of the Education Code is amended to read:

42238.2. (a) Notwithstanding Section 42238.5, a school district that experiences a decline in the number of units of average daily attendance in excess of 10 percent of its total average daily attendance as a result of the closure of a facility operated by a branch of the United States Armed Forces in that school district's boundaries shall be entitled to an adjustment to its units of average daily attendance pursuant to this section. The year preceding a decline shall be the base year.

(b) In the second year after the base year, the district average daily attendance pursuant to Section 42238.5 may, if the district chooses, be increased by 75 percent of the difference between the base year units of average daily attendance and the units of average daily attendance in the first year of decline. In the third year after the base year, the district average daily attendance pursuant to Section 42238.5 may, if the district chooses, be increased by 50 percent of the difference between the base year units of average daily attendance and the units of average daily attendance in the first year of decline. The amount of money represented by these increases shall be considered a loan to the school district. Loan repayments shall commence no later than the fourth year after the base year.

(c) (1) The Superintendent of Public Instruction, in consultation with a school district subject to this section, shall determine a schedule for repayment of the total amount loaned pursuant to this section which may not exceed 10 years. Payments shall include interest charged at a rate based on the most current investment rate of the Pooled Money Investment Account in the General Fund as of the date of the disbursement of funds to the school district.

(2) Upon written notification by the Superintendent of Public Instruction that the school district has not made one or more of the payments required by the schedule established pursuant to paragraph (1), the Controller shall withhold from Section A of the State School Fund the defaulted payment which shall not exceed the amount of any apportionment entitlement of the district to moneys in Section A of the State School Fund. In that regard, the Controller shall withhold the amount of any payment made under this subdivision, including reimbursement of the Controller's

administrative costs as determined under a schedule approved by the California Debt Advisory Commission, from subsequent apportionments to the school district from Section A of the State School Fund.

(3) Any apportionments made by the Controller pursuant to paragraph (2) shall be deemed to be an allocation to the school district for purposes of subdivision (b) of Section 8 of Article XVI of the California Constitution, and for purposes of Chapter 2 (commencing with Section 41200) of Part 24.

(d) In no event shall the adjustment provided by this section cause the apportionment to a school district to exceed the amount that would otherwise be calculated for apportionment to the district pursuant to Sections 42238 and 42238.1.

(e) This section does not apply to a school district that experiences a decline in enrollment as a result of a school district reorganization pursuant to Chapter 3 (commencing with Section 35500) of Part 21 or any other law.

SEC. 2. Section 42238.3 of the Education Code is amended to read:

42238.3. (a) For each year during the loan repayment period provided for in Section 42238.2, any district utilizing the adjustment pursuant to Section 42238.2 may adjust its revenue limit computed pursuant to Section 42238 to the statewide average revenue limit per unit of average daily attendance for its size and type of district in proportion to the percentage of the loan that the school district has repaid up to and including the year in which the revenue limit adjustment is made.

(b) This section does not apply to a school district that experiences a decline in enrollment as a result of a school district reorganization pursuant to Chapter 3 (commencing with Section 35500) of Part 21 or any other law.

CHAPTER 405

An act to amend Section 30796.7 of the Streets and Highways Code, relating to toll bridges.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 30796.7 of the Streets and Highways Code is amended to read:

30796.7. (a) Notwithstanding any other provision of law, the San Diego Association of Governments may impose a toll on vehicles crossing the San Diego-Coronado Bridge. The toll shall be established by the association after conducting at least one public

hearing.

(b) The authority of the commission relative to tolls on the bridge is hereby transferred to the San Diego Association of Governments. All tolls established by the commission shall remain in effect until June 30, 1995, unless changed by the San Diego Association of Governments. Thereafter, all tolls on the bridge shall be at the rates established by the San Diego Association of Governments, except that at no time shall the rate of toll for Class 1 vehicles exceed one dollar and fifty cents ($1.50) per vehicle.

(c) (1) The revenues from any tolls imposed on the bridge shall be used first for expenses related to the collection of tolls and operation of the bridge, including, but not limited to, reimbursement for any operating and maintenance costs and, second, for improvements to the bridge and its approaches. Tolls shall be established at an amount which will generate revenue sufficient to meet the requirements set forth in this paragraph, as determined by the department.

(2) The revenues from any tolls imposed on the bridge may also be used for costs incurred by the San Diego Association of Governments in administering this section and for any of the following:

(A) Transportation services that either increase the capacity of the bridge and its approaches or reduce the demand for travel in the transportation corridor that includes the bridge.

(B) Alternative forms of transportation, within the transportation corridor that includes the bridge, that reduce congestion and air pollution, including, but not limited to, ferry service and public transit.

(C) Capital improvements and related expenditures within the transportation corridor for construction and maintenance of bikeways.

(d) For the purposes of this section, "transportation corridor" means the San Diego-Coronado Bridge and its approaches which extend from Route 5 in the City of San Diego to the North Island Naval Air Station via Route 282, and to the Naval Amphibious Base via Route 75 in the City of Coronado.

(e) All money deposited in the San Diego-Coronado Toll Bridge Revenue Fund prior to March 26, 1992, and not expended, encumbered, or programmed before January 1, 1994, is appropriated to the Controller for allocation to the San Diego Association of Governments for the purposes of paragraph (2) of subdivision (c).

(f) Not later than June 30, 1995, and not later than June 30 of every even-numbered year thereafter, the San Diego Association of Governments shall adopt an expenditure plan specifying the projects and programs that are to be funded with toll revenues, and shall submit copies of each plan to the Senate Committee on Transportation and the Assembly Committee on Transportation.

(g) If the San Diego Association of Governments imposes tolls pursuant to subdivision (a), it shall reimburse the department for

costs incurred by the department in operating the bridge, collecting tolls, and performing other related services. The association and the department shall enter into an agreement which provides for the full reimbursement of the department for all operating and maintenance costs.

(h) The San Diego Association of Governments, not later than June 30, 1995, and not later than June 30 of each year thereafter, shall prepare an audit, to be funded solely with toll revenues, of all expenditures and revenue collected pursuant to this section. The first audit shall include all expenditures and revenue collected prior to January 1, 1995. A report of the audit shall be published and made available to the members of the San Diego Association of Governments, and to any member of the public who submits a written request therefor within 30 days upon receipt of the request.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 406

An act to amend Section 25201.5 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 25201.5 of the Health and Safety Code is amended to read:

25201.5. (a) Notwithstanding any other provision of law, a hazardous waste facility permit is not required for a generator who treats hazardous waste of a total weight of not more than 500 pounds, or a total volume of not more than 55 gallons, in any calendar month, if both of the following conditions are met:

(1) The hazardous waste is not an extremely hazardous waste and is listed in Section 67450.11 of Title 22 of the California Code of Regulations, as in effect on January 1, 1992, as eligible for treatment pursuant to the regulations adopted by the department for operation under a permit-by-rule and the treatment technology used is approved for that waste stream in Section 67450.11 of Title 22 of the California Code of Regulations for treatment under a permit-by-rule.

(2) The generator is not otherwise required to obtain a hazardous

waste facility permit or other grant of authorization for any other hazardous waste management activity at the facility.

(b) Notwithstanding any other provision of law, treatment in the following units is ineligible for exemption pursuant to subdivision (a) or (c):

(1) Landfills.

(2) Surface impoundments.

(3) Injection wells.

(4) Waste piles.

(5) Land treatment units.

(6) Thermal destruction units.

(c) Notwithstanding any other provision of law, a hazardous waste facility permit or other grant of authorization is not required to conduct the following treatment activities, if the generator treats the following hazardous waste streams using the treatment technology required by this subdivision:

(1) The generator treats resins mixed in accordance with the manufacturer's instructions.

(2) The generator treats a container of 110 gallons or less capacity, which is not constructed of wood, paper, cardboard, fabric, or any other similar absorptive material, for the purposes of emptying the container as specified by Section 66261.7 of Title 22 of the California Code of Regulations, as revised July 1, 1990, or treats the inner liners removed from empty containers that once held hazardous waste or hazardous material. The generator shall treat the container or inner liner by using the following technologies, if the treated containers and rinseate are managed in compliance with the applicable requirements of this chapter:

(A) The generator rinses the container or inner liner with a suitable liquid capable of dissolving or removing the hazardous constituents which the container held.

(B) The generator uses physical processes, such as crushing, shredding, grinding, or puncturing, that change only the physical properties of the container or inner liner, if the container or inner liner is first rinsed as provided in subparagraph (A) and the rinseate is removed from the container or inner liner.

(3) The generator conducts drying by pressing or by passive or heat-aided evaporation to remove water from wastes classified as special wastes by the department pursuant to Section 66261.124 of Title 22 of the California Code of Regulations.

(4) The generator conducts magnetic separation or screening to remove components from wastes classified as special wastes by the department pursuant to Section 66261.124 of Title 22 of the California Code of Regulations.

(5) The generator neutralizes wastes which are hazardous solely due to corrosivity or toxicity that results only from the acidic or alkaline material, in elementary neutralization units, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, if the wastes result solely from the regeneration of ion exchange media

used to demineralize water, do not contain more than 10 percent acid or base concentration by weight, and are treated in vessels and piping constructed of materials compatible with the range of temperatures and pH levels, and subject to appropriate pH and temperature controls.

(6) The generator neutralizes acidic wastes which are hazardous solely due to corrosivity resulting from the presence of food or food by-products, and alkaline or acidic waste, other than wastes containing nitric acid, at SIC Code Group 20, food and kindred product facilities, as defined in subdivision (p) of Section 25501, if both of the following conditions are met:

(A) The neutralization process does not result in the emission of volatile hazardous waste constituents or toxic air contaminants.

(B) The neutralization process is required in order to meet discharge or other regulatory requirements.

(7) The generator processes effluent hazardous waste for disposal from the processing of silver halide-based imaging products, if all of the following conditions are met:

(A) The effluent is a hazardous waste solely due to its silver content.

(B) The effluent is treated within 90 days of its generation.

(C) The effluent is treated in a tank or container.

(D) The total influent hazardous waste stream treated does not exceed 500 gallons in any calendar month.

(E) The effluent is treated with a technology or combination of technologies which recover the silver to a level less than 5 mg/l total silver in the final waste water discharge, or a lower level as may be set by the local publicly owned treatment works.

(8) Except as provided for specific waste streams in Section 25200.3, the generator conducts the separation by gravity of the following, if the activity is conducted in impervious tanks or containers constructed of noncorrosive materials, the activity does not involve the addition of heat or other form of treatment, or the addition of chemicals other than flocculants and demulsifiers, and the activity is managed in compliance with applicable requirements of federal, state, or local agency or treatment works:

(A) The settling of solids from waste where the resulting aqueous stream is not hazardous.

(B) The separation of oil/water mixtures and separation sludges, if the average oil recovered per month is less than 25 barrels.

(9) The generator is a laboratory which is certified by the State Department of Health Services, or is a laboratory which is operated by an educational institution, which treats waste water which is generated onsite solely as a result of analytical testing, or which is a laboratory which treats less than one gallon of hazardous waste, which is generated onsite, in any single batch, subject to the following:

(A) The waste water treated is hazardous solely due to corrosivity or toxicity that results only from the acidic or alkaline material, as

defined in Section 66260.10 of Title 22 of the California Code of Regulations, or is excluded from the definition of hazardous waste by subparagraph (E) of paragraph (2) of subsection (a) of Section 66261.3 of Title 22 of the California Code of Regulations, or both.

(B) The treatment meets the following requirements, in addition to all other requirements of this section:

(i) The treatment complies with all applicable pretreatment requirements.

(ii) Neutralization occurs in elementary neutralization units, as defined in Section 66260.10 of Title 22 of the California Code of Regulations; wastes to be neutralized do not contain any more than 10 percent acid or base concentration by weight, or any other concentration limit which may be imposed by the department; and vessels and piping for neutralization are constructed of materials compatible with the range of temperatures and pH levels, and subject to appropriate pH temperature controls.

(iii) Treatment does not result in the emission of volatile hazardous waste constituents or toxic air contaminants.

(10) The hazardous waste treatment is carried out in a quality control or quality assurance laboratory at a facility that is not an offsite hazardous waste facility and the treatment activity otherwise meet the requirements of paragraph (1) of subdivision (a).

(11) Any wastestream technology combination certified by the department, pursuant to Section 25200.1.5, as suitable for authorization pursuant to this section, that operates pursuant to the conditions imposed on that certification.

(12) The generator uses any technology that is certified by the department pursuant to Section 25200.1.5. as effective for the treatment of formaldehyde or glutaraldehyde solutions used in health care facilities that are operated pursuant to the conditions imposed on the certification and which makes the operation appropriate to this tier. The technology may be certified using a pilot certification process until the department adopts regulations pursuant to Section 25200.1.5. This paragraph shall be operative only until April 11, 1996.

(d) A generator conducting treatment pursuant to subdivision (a) or (c) shall meet all of the following conditions:

(1) The waste being treated is generated onsite, and a residual material from the treatment of a hazardous waste generated offsite is not a waste that has been generated onsite.

(2) The treatment does not require a hazardous waste facilities permit pursuant to the federal act.

(3) The generator prepares and maintains written operating instructions and a record of the dates, amounts, and types of waste treated.

(4) The generator prepares and maintains a written inspection schedule and log of inspections conducted.

(5) The records specified in paragraphs (3) and (4) are maintained onsite for a period of three years.

(6) The generator maintains adequate records to demonstrate that it is in compliance with all applicable pretreatment standards and with all applicable industrial waste discharge requirements issued by the agency operating the publicly owned treatment works into which the wastes are discharged.

(7) (A) The generator submits a notification to the department and to the local health officer or other local public officer authorized to implement this chapter pursuant to Section 25180 on or before April 1, 1993, or if the generator is commencing the first treatment of waste pursuant to this section, not more than 60 days before commencing treatment of that waste pursuant to this section. The notification shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to permit applications, shall be on a form prescribed by the department, and shall include, but not be limited to, all of the following information:

(i) The name, identification number, site address, mailing address, and telephone number of the generator to whom the conditional exemption applies.

(ii) A description of the physical characteristics and chemical composition of the hazardous waste to which the conditional exemption applies.

(iii) A description of the hazardous waste treatment activity to which the conditional exemption applies, including, but not limited to, the basis for determining that a hazardous waste permit is not required under the federal act.

(iv) A description of the characteristics and management of any treatment residuals.

(B) The development and publication of the notification form specified in subparagraph (A) is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the notification form.

(C) Any notification submitted pursuant to this paragraph shall supersede any prior notice of intent submitted by the same generator in order to obtain a permit-by-rule under the regulations adopted by the department. This subparagraph does not require the department to refund any fees paid for any application in conjunction with the submission of a notice of intent for a permit-by-rule.

(8) (A) Upon terminating operation of any treatment process or unit exempted pursuant to this section, the generator who conducted the treatment shall remove or decontaminate all waste residues, containment system components, soils, and other structures or equipment contaminated with hazardous waste from the unit. The removal of the unit from services shall be conducted in a manner that does both of the following:

(i) Minimizes the need for further maintenance.

(ii) Eliminates the escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or waste decomposition products to the environment after treatment process is no longer in operation.

(B) Any owner or operator who permanently ceases operation of a treatment process or unit that is conditionally exempted pursuant to this section shall provide written notification to the department and to the local health officer or other local public officer designated by the director pursuant to Section 25180 upon completion of all activities required under this subdivision.

(9) The waste is managed in accordance with all applicable requirements for generators of hazardous waste under this chapter and the regulations adopted by the department pursuant to this chapter.

(10) The generator submits a fee in the amount required by Section 25205.14. The generator shall submit that fee within 30 days of the date that the fee is assessed by the State Board of Equalization, in the manner specified by Section 43152.10 of the Revenue and Taxation Code.

(11) Notwithstanding any other provision of law, the generator shall submit the fee required by Section 25205.14 for the 1993 reporting period to the department as part of, and at the same time as, the notification required pursuant to paragraph (7) of subdivision (d) that is due on April 1, 1993. Any notification not accompanied by payment of the fee is invalid and shall not result in a grant of conditional exemption.

(e) (1) Unless otherwise required by federal law, ancillary equipment for a tank or container treating hazardous wastes solely pursuant to this section, is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the ancillary equipment's integrity is attested to pursuant to Section 62265.191 of Title 22 of the California Code of Regulations every two years from the date that retrofitting requirements would otherwise apply.

(2) The Legislature hereby finds and declares that, in the case of underground, gravity-pressured sewer systems, integrity testing is often not feasible. Therefore, on or before June 30, 1994, the department shall, by regulation, determine the best feasible leak detection measures which are sufficient to ensure that underground gravity-pressured sewer systems, for which it is not feasible to conduct integrity testing, do not leak. On and after July 1, 1994, if it is not feasible for an operator's ancillary equipment, or a portion thereof, to undergo integrity testing, the operator is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the operator implements the best feasible leak detection measures that are determined to be sufficient by the department in those regulations, and those leak detection measures do not reveal any leaks emanating from the operator's ancillary equipment. Any ancillary equipment found to leak shall be retrofitted by the operator to meet the full secondary containment standards of Section

66265.196 of Title 22 of the California Code of Regulations.

(f) Nothing in this section shall abridge any authority granted to the department by any other provision of law to impose any further restrictions or limitations upon facilities subject to this section, that the department determines to be necessary to protect human health or the environment.

(g) A generator may contract with another party to provide onsite treatment in accordance with the permit exemption provisions of this section. Any person who performs onsite treatment in a transportable treatment unit pursuant to this subdivision shall comply with the standards set forth in this chapter for the same treatment units treating the same waste streams and shall be subject to any additional requirements for transportable treatment units that are imposed by the department by regulations adopted pursuant to this section. The additional requirements may include, but shall not be limited to, a waste analysis plan, site/specific notification, financial assurances for third-party liability, operating standards, records retention, and time limits for the operation of the transportable treatment unit at a particular site.

(h) A generator conducting activities which are exempt from this chapter pursuant to Section 66261.7 of Title 22 of the California Code of Regulations, as that section read on January 1, 1993, is not required to comply with this section.

CHAPTER 407

An act to amend Section 51.7 of the Civil Code, and to amend Sections 422.6, 422.7, 422.75, and 1170.75 of the Penal Code, relating to hate crimes.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 51.7 of the Civil Code is amended to read:

51.7. (a) All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics. The identification in this subdivision of particular bases of discrimination is illustrative rather than restrictive.

This section does not apply to statements concerning positions in a labor dispute which are made during otherwise lawful labor picketing.

(b) As used in this section, "sexual orientation" means heterosexuality, homosexuality, or bisexuality.

SEC. 2. Section 422.6 of the Penal Code is amended to read:

422.6. (a) No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.

(b) No person, whether or not acting under color of law, shall knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the Constitution or laws of this state or by the Constitution or laws of the United States, because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.

(c) Any person convicted of violating subdivision (a) or (b) shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars ($5,000), or by both that imprisonment and fine. However, no person shall be convicted of violating subdivision (a) based upon speech alone, except upon a showing that the speech itself threatened violence against a specific person or group of persons and that the defendant had the apparent ability to carry out the threat.

SEC. 3. Section 422.7 of the Penal Code is amended to read:

422.7. Except in the case of a person punished under Section 422.6, any crime which is not made punishable by imprisonment in the state prison shall be punishable by imprisonment in the state prison or in a county jail not to exceed one year, by a fine not to exceed ten thousand dollars ($10,000), or by both that imprisonment and fine, if the crime is committed against the person or property of another for the purpose of intimidating or interfering with that other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the defendant perceives that the other person has one or more of those characteristics, under any of the following circumstances, which shall be charged in the accusatory pleading:

(a) The crime against the person of another either includes the present ability to commit a violent injury or causes actual physical injury.

(b) The crime against property causes damage in excess of five

hundred dollars ($500).

(c) The person charged with a crime under this section has been convicted previously of a violation of subdivision (a) or (b) of Section 422.6, or has been convicted previously of a conspiracy to commit a crime described in subdivision (a) or (b) of Section 422.6.

SEC. 4. Section 422.75 of the Penal Code is amended to read:

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, and who voluntarily acted in concert with another person either personally or by aiding and abetting another person shall receive an additional two, three, or four years in the state prison, at the court's discretion.

(c) For the purpose of imposing an additional term under subdivision (a) or (b), it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. Nothing in this subdivision shall preclude a court from also imposing a sentence enhancement pursuant to Section 12022.5 or 12022.55, or any other law.

(d) A person who is punished pursuant to subdivision (a) or (b) also shall receive an additional term of one year in the state prison for each prior felony conviction on charges brought and tried separately in which it was found by the trier of fact or admitted by the defendant that the crime was committed because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation, or that the crime was committed because the defendant perceived that the victim had one or more of those characteristics. This additional term shall only apply where a sentence enhancement is not imposed pursuant to Section 667 or 667.5.

(e) The additional term in subdivisions (a), (b), and (d) shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(f) The additional term in subdivisions (a), (b), and (d) shall be in addition to any other punishment provided by law.

(g) Notwithstanding any other law, the court may strike the additional term in subdivisions (a), (b), and (d) if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

SEC. 5. Section 1170.75 of the Penal Code is amended to read:

1170.75. Except where the court imposes additional punishment under Section 422.75 or in a case in which the person has been convicted of an offense subject to Section 1170.8, the fact that a person committed a felony or attempted to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or because he or she perceived that the victim had one or more of those characteristics, shall be considered a circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

SEC. 6. The Legislature hereby finds and declares that the amendments of Section 51.7 of the Civil Code and Sections 422.6, 422.7, 422.75, and 1170.75 of the Penal Code made by this act do not constitute changes in, but are declaratory of, existing law.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 408

An act to amend Sections 20022.01, 20024.002, 20523, 21251.133, 21263.1, 21263.4, 21263.5, 21365.5, and 21365.7 of, and to repeal Section 21364.5 of, the Government Code, relating to the Public Employees' Retirement System.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 20022.01 of the Government Code is amended to read:

20022.01. A contracting agency may report an amount for each member that is equal to a uniformly applied percentage of salary in lieu of computing and reporting the actual compensation attributable to each individual member if the contracting agency has agreed in a memorandum of understanding reached pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 that the aggregate amount to be reported by the contracting agency for all members within a membership classification bears a reasonable relation to the aggregate amount that would otherwise be

required to be reported pursuant to Section 20023.

SEC. 1.5. Section 20024.002 of the Government Code is amended to read:

20024.002. (a) Notwithstanding Section 20024.01, "final compensation" for the purposes of determining any pension or benefit with respect to a state member who retires or dies on or after July 1, 1991, and with respect to benefits based on service with the state, means the highest annual compensation which was earnable by the state member during the consecutive 12-month period of employment immediately preceding the effective date of his or her retirement or the date of his or her last separation from state service if earlier or during any other period of 12 consecutive months during his or her membership in the system which the member designates on the application for retirement.

(b) With respect to a state member who retires or dies on or after July 1, 1991, and who was a managerial employee, as defined by subdivision (e) of Section 3513, or a supervisory employee, as defined by subdivision (g) of Section 3513, whose monthly salary range was administratively reduced by 5 percent because of the salary range reductions administratively imposed upon managers and supervisors during the 1991–92 fiscal year, "final compensation" means the highest annual compensation the state member would have earned had his or her salary range not been reduced by the 5-percent reduction. This subdivision shall only apply if the period during which the state member's salary was reduced would have otherwise been included in determining his or her final compensation. The costs, if any, that may result from the use of the higher final compensation shall be paid for by the employer in the same manner as other retirement benefits are funded.

SEC. 2. Section 20523 of the Government Code is amended to read:

20523. (a) Shares of members in the funds of a local employer shall be credited to the respective individual accounts of the local agency members who have been included in this system, and administered as if made during membership in this system, except that the annuity provided by those contributions with accumulated interest shall be deducted first from the pension which otherwise would be payable on account of prior service and the balance of the contributions with accumulated interest shall be deducted from the pension which otherwise would be payable on account of current service. The total of the funds transferred to this system shall be offset against the prior or current service liability, as the case may be, before determining the contribution to be paid by the contracting agency.

(b) A former member of the local retirement system who withdrew any contributions prior to the effective date of that agency's contract with this system is entitled to credit for the service upon which those contributions were made if he or she elects to deposit any of those withdrawn contributions with this system under

the terms and conditions specified in Section 20654. Any amounts so deposited with this system shall be administered as provided in this section.

(c) As used in subdivision (b), "former member" shall also include any former member of the local retirement system who failed to exercise the right of election pursuant to paragraph (3) of subdivision (b) of 24810 of the Education Code.

SEC. 3. Section 21251.133 of the Government Code is amended to read:

21251.133. (a) The service retirement allowance for a local miscellaneous member who is subject to Article 3.6 (commencing with Section 20547) of Chapter 4 of this part is a pension derived from the contributions of the employer sufficient, when added to the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of retirement, to equal the fraction of one-hundredth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year in the following table, multiplied by the member's number of years of local miscellaneous service subject to Article 3.6 (commencing with Section 20547) of Chapter 4 of this part:

Age at Retirement	Fraction
50	.5000
50¼	.5167
50½	.5334
50¾	.5500
51	.5667
51¼	.5834
51½	.6000
51¾	.6167
52	.6334
52¼	.6500
52½	.6667
52¾	.6834
53	.7000
53¼	.7167
53½	.7334
53¾	.7500
54	.7667
54¼	.7834
54½	.8000
54¾	.8167
55	.8334
55¼	.8500
55½	.8667
55¾	.8834
56	.9000

56¼	.9167
56½	.9334
56¾	.9500
57	.9667
57¼	.9834
57½	1.0000
57¾	1.0167
58	1.0334
58¼	1.0500
58½	1.0667
58¾	1.0834
59	1.1000
59¼	1.1167
59½	1.1334
59¾	1.1500
60	1.1667
60¼	1.1834
60½	1.2000
60¾	1.2167
61	1.2334
61¼	1.2500
61½	1.2667
61¾	1.2834
62	1.3000
62¼	1.3167
62½	1.3334
62¾	1.3500
63	1.3667
63¼	1.3834
63½	1.4000
63¾	1.4167
64	1.4334
64¼	1.4500
64½	1.4667
64¾	1.4834
65	1.5000

(b) The service retirement allowance for a local miscellaneous member who, pursuant to Section 20547.4, elects to be subject to Article 3.6 (commencing with Section 20547) of Chapter 4 of this part shall be: the sum of the allowance for service rendered subsequent to the effective date of the election computed pursuant to subdivision (a) of this section, added to the allowance for service rendered as a local miscellaneous member prior to the effective date of the election, computed pursuant to the formula specified in the employer's contract with the board.

SEC. 4. Section 21263.1 of the Government Code is amended to read:

21263.1. "Member" for purposes of Section 21263 also includes

those local miscellaneous members and local safety members who on the day preceding the operative date of this section were subject to Sections 21264 and 21264.1 as those sections read prior to their repeal on such operative date. "Member" shall not include any other local miscellaneous or local safety member or apply to any contracting agency employing such member unless and until the agency elects to be subject to the provisions of Section 21263 by amendment to its contract made in the manner prescribed for approval of contracts, except that an election among employees shall not be required or, in the case of contracts made on or after the operative date of this section, by express provision of such contract. Such election may be exercised separately with respect to local safety members who are firemen, local safety members who are policemen, local safety members other than policemen or firemen, and local miscellaneous members. The operative date of Section 21263 for purposes of application to that section to such local members shall be the effective date of such contract or contract amendment.

"Surviving spouse" shall mean, for a member subject to Section 21263, who retires for disability retirement on or after January 1, 1995, a husband or wife who was married to the member on the date of his or her retirement and continuously to the date of his or her death.

SEC. 5. Section 21263.4 of the Government Code is amended to read:

21263.4. Upon the death, after the effective date of retirement, of a state miscellaneous member none of whose service rendered in state employment has been included in the federal system and whose retirement is effective on or after July 1, 1974, or of a school member or school safety member none of whose service rendered in school service or school safety service has been included in the federal system and whose retirement is effective on or after July 1, 1983, a monthly allowance derived from employer contributions equal to 50 percent of the amount of his or her retirement allowance as it was at his or her death and based on service credited to him or her as a member subject to this section but excluding any portion of the retirement allowance derived from additional contributions of the member shall be paid to the surviving spouse throughout life or until remarriage. If there be no surviving spouse, or upon the death or remarriage of the surviving spouse, the allowance shall be paid collectively to every unmarried child of the deceased member who has not attained age 18, or who is disabled by a condition which disabled that child prior to attaining age 18 and which has continued without interruption after age 18, until the disability ceases. If at the time of the retired member's death there is no eligible surviving spouse or children, the allowance shall be paid to a parent, or collectively to parents, of the deceased member dependent upon him or her for support. If on the effective date of retirement there is a person who will be eligible if the person survives, the member's election of an optional settlement other than optional settlement 1

shall apply only to a portion of his or her allowance as provided in Section 21330 with respect to allowances under Section 21263. If on the effective date of his or her retirement the member has no surviving spouse, eligible children, or dependent parents and elected an optional settlement, no allowance under this section shall be paid.

"Surviving spouse," for purposes of service retirement subject to this section, means a husband or wife who was married to the member for a continuous period beginning at least one year prior to his or her retirement and ending on the date of his or her death and, for purposes of disability retirement subject to this section where the member retired on or after January 1, 1995, means a husband or wife who who was married to the member on the date of his or her retirement and continuously to the date of his or her death.

SEC. 6. Section 21263.5 of the Government Code is amended to read:

21263.5. Upon death after the effective date of retirement of a state miscellaneous member some of whose service rendered in state employment has been included in the federal system and whose retirement is effective on or after July 1, 1975, or of a school member or school safety member some of whose service rendered in school employment has been included in the federal system and whose retirement is effective on or after July 1, 1983, a monthly allowance, derived from employer contributions, equal to a percentage of the amount of his or her retirement allowance as it was at his or her death based on service credited to him or her as a member subject to this section but excluding any portion of the retirement allowance derived from additional contributions of the member shall be paid to the surviving spouse throughout life or until remarriage. The percentage shall be 25 percent for an allowance based on service which was also covered under the federal system and 50 percent for an allowance based on any other service, except that the percentage shall be 50 percent for the allowance of a member whose service was subject to Section 21251.146 or 21251.147 and who had become a member prior to November 1, 1988. If there is no surviving spouse, or upon the death or remarriage of the surviving spouse, the allowance shall be paid collectively to every unmarried child of the deceased member who has not attained age 18, or who is disabled by a condition which disabled that child prior to attaining age 18 and which has continued without interruption after age 18, until the disability ceases. If at the time of the retired member's death there is no eligible surviving spouse or children, the allowance shall be paid to a parent, or collectively to parents, of the deceased member dependent upon him or her for support. If on the effective date of retirement there is a person who will be eligible if the person survives, the member's election of an optional settlement, other than optional settlement 1, shall apply only to a portion of the allowance as provided in Section 21330 with respect to allowances under Section 21263. If on the effective date of his or her retirement the member has no surviving spouse, eligible children, or dependent

parents and elected an optional settlement, no allowance under this section shall be paid.

"Surviving spouse" for purposes of service retirement subject to this section means a husband or wife who was married to the member for a continuous period beginning at least one year prior to his or her retirement and ending on the date of his or her death and, for purposes of disability retirement subject to this section where the member retired on or after January 1, 1995, means a husband or wife who was married to the member on the date of his or her retirement and continuously to the date of his or her death.

SEC. 7. Section 21364.5 of the Government Code is repealed.

SEC. 8. Section 21365.5 of the Government Code is amended to read:

21365.5. Upon the death of a member who has attained the minimum age for voluntary service retirement applicable to him or her in his or her last employment preceding death, and who is eligible to retire and in circumstances in which the basic death benefit is payable other than solely that of membership in a county retirement system, or a retirement system maintained by the university, a monthly allowance equal to one-half of and derived from the same source as the unmodified retirement allowance which the member would have been entitled to receive if he or she had retired for service on the date of his or her death shall be payable:

(a) To the member's surviving spouse as long as he or she lives or until his or her remarriage.

(b) To the children under age 18 collectively if there is no surviving spouse or if the surviving spouse dies or remarries before all children of the deceased member attain age 18, until every child dies or attains age 18; provided, that no child shall receive any allowance after marrying or attaining the age of 18.

Where a member does not have a surviving spouse nor any children under the age of 18 years at the time of death, no allowance shall be payable under this section.

No allowance shall be payable under this section if a special death benefit is payable.

The allowance provided by this section shall be paid in lieu of the basic death benefit but a surviving spouse qualifying for the allowance may elect before the first payment on account of it to receive the basic death benefit in lieu of the allowance.

The allowance provided by this section shall be paid in lieu of the basic death benefit but the guardian of the minor child or children qualifying for the allowance may elect, before the first payment on account of it, to receive the basic death benefit in lieu of the allowance. If an election of the basic death benefit is made, the basic death benefit shall be paid to all the member's surviving children, regardless of age or marital status, in equal shares.

If the total of the payments made are less than the basic death benefit which was otherwise payable on account of the member's death, the amount of the basic death benefit less any payments made

pursuant to this section shall be paid in a lump sum as follows:

(a) If the person last entitled to the allowance is the remarried spouse of the member, to the remarried spouse.

(b) Otherwise, to the surviving children of the member, share and share alike, or if there are no children, to the estate of the person last entitled to the allowance.

The board shall compute the amount by which benefits paid pursuant to this section exceed the benefits which would otherwise be payable and shall charge any excess against the contributions of the state so that there shall be no increase in contributions of members by reason of benefits paid pursuant to this section. As used in this section, "a surviving spouse" means a spouse that was married to the member for at least one year prior to his or her death, and "child" includes a posthumously born child of the member.

On and after April 1, 1972, this section shall apply to all contracting agencies and to the employees of those agencies with respect to deaths occurring after that operative date, whether or not the agencies have previously elected to be subject to this section.

SEC. 9. Section 21365.7 of the Government Code is amended to read:

21365.7. When a member, who is eligible to retire and who has attained the minimum age for voluntary service retirement applicable to him or her in his or her last employment preceding death, dies in circumstances in which the basic death benefit is payable other than solely upon the basis of membership in a county retirement system or a retirement system maintained by the university, and when the member has made a preretirement election of the benefits provided by Section 21365.5 for his or her surviving spouse and, if none, for any eligible surviving children or Section 21365.6, if payable, for his or her surviving spouse, and the designated spouse or children survive the member, a monthly allowance equal to the amount provided by the elected benefit shall be payable to the designated spouse or children.

No benefit is payable under this section if the special death benefit is payable.

The allowance provided by this section shall be paid in lieu of the basic death benefit, but a surviving spouse designated for the allowance may elect, before the first payment on account of it, to receive the basic death benefit in lieu of the allowance.

The allowance provided by this section shall be paid in lieu of the basic death benefit but the guardian of the minor child or children designated for the allowance may elect, before the first payment on account of it, to receive the basic death benefit in lieu of the allowance. If an election of the basic death benefit is made, the basic death benefit shall be paid to all the member's surviving children, regardless of age or marital status, in equal shares.

If the accrued allowance paid under this section is less than the basic death benefit payable, any such balance shall be paid as a lump sum to the remarried spouse; if there is no remarried spouse, then

to the surviving children of the member, share and share alike; if there is no remarried spouse and no surviving children, then to the estate of the person last entitled.

This section shall apply only to a member whose death occurs on or after January 1, 1990.

As used in this section, "a surviving spouse" means a husband or wife who was married to the member for a continuous period beginning at least one year prior to his or her death. "Children" means unmarried children under age 18, until they reach age 18 or marry prior to age 18.

Nothing in this section is intended to, or shall be construed to, diminish any rights conferred by Section 21365.5 or 21365.6 or by any other provision of this part.

CHAPTER 409

An act to amend Section 799 of the Penal Code, relating to criminal procedure.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 799 of the Penal Code is amended to read:

799. Prosecution for an offense punishable by death or by imprisonment in the state prison for life or for life without the possibility of parole, or for the embezzlement of public money, may be commenced at any time.

This section shall apply in any case in which the defendant was a minor at the time of the commission of the offense and the prosecuting attorney could have petitioned the court for a fitness hearing pursuant to Section 707 of the Welfare and Institutions Code.

CHAPTER 410

An act to amend Sections 19051 and 19055 of the Business and Professions Code, relating to home furnishings.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 19051 of the Business and Professions Code is amended to read:

19051. Every upholstered-furniture retailer, unless he or she

holds a furniture manufacturer's license, a wholesale furniture dealer's license, a custom upholsterer's license, or a retail furniture and bedding dealer's license shall hold a retail furniture dealer's license.

This section does not apply to an individual or firm whose sole business is designing and specifying for interior spaces, and who purchases specific amenable upholstered furniture items on behalf of a client, provided that the furniture is purchased from an appropriately licensed wholesaler or retailer.

SEC. 2. Section 19055 of the Business and Professions Code is amended to read:

19055. Every bedding retailer, unless he or she holds a bedding manufacturer's license, a wholesale bedding dealer's license, a bedding renovator's license, or a retail furniture and bedding dealer's license, shall hold a retail bedding dealer's license.

This section does not apply to an individual or firm whose sole business is designing and specifying for interior spaces, and who purchases specific amenable bedding items on behalf of a client, provided that the bedding is purchased from an appropriately licensed wholesaler or retailer.

CHAPTER 411

An act to amend Section 5054.1 of the Penal Code, relating to corrections.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 5054.1 of the Penal Code is amended to read:

5054.1. The Director of Corrections has full power to order returned to custody any person under the director's jurisdiction. The written order of the Director of Corrections shall be sufficient warrant for any peace officer to return to actual custody any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody. It is hereby made the duty of all peace officers to execute the order in like manner as ordinary criminal process.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000),

reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 412

An act to amend Section 217 of the Health and Safety Code, relating to health.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 217 of the Health and Safety Code is amended to read:

217. (a) For purposes of this section, the following definitions shall apply:

(1) "SIDS" means sudden infant death syndrome.

(2) "SIDS Advisory Council" or "advisory council" means the Sudden Infant Death Syndrome Advisory Council established pursuant to subdivision (b).

(b) The State Department of Health Services shall establish a Sudden Infant Death Syndrome Advisory Council. The advisory council shall consist of nine members who shall be chosen by the State Director of Health Services in consultation with regional SIDS parent advisory councils. At least one-third of the members of the advisory council chosen by the director shall be representatives of SIDS parents' groups. The membership of the advisory council shall also include, but not be limited to, a coroner, a medical examiner, a public health nurse, a physician and surgeon with expertise in SIDS, and a representative from a police or fire department.

(c) The SIDS Advisory Council shall do all of the following:

(1) Provide guidance to the state department in the development of training, educational, and research programs regarding SIDS.

(2) Provide ongoing guidance to the Governor and the Legislature regarding the need for specific programs regarding SIDS for specific targeted groups of persons.

(3) In conjunction with the state department or a person with whom the state department contracts to provide SIDS education, convene a statewide conference annually to examine the progress in discovering the cause of SIDS, explore the progress of newly established programs and services related to SIDS, identify future needs for legislation and program development regarding SIDS, and make recommendations on the needs of programs regarding SIDS. Conference participants shall include professionals and service

providers in the area of SIDS, family members of SIDS victims, and the staff of members of the Legislature and departments of the state.

(d) The members of the advisory council shall serve at the pleasure of the director. The members of the advisory council shall serve without compensation, but shall be reimbursed for necessary and travel expenses incurred in the performance of the duties of the advisory council.

(e) The requirements contained in this section shall be subject to the annual Budget Act and shall be operative only to the extent that funds are appropriated for the purposes of this section.

CHAPTER 413

An act to amend Sections 7011.4 and 7027.1 of the Business and Professions Code, relating to contractors.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 7011.4 of the Business and Professions Code is amended to read:

7011.4. (a) Notwithstanding Section 7011, there is in the Contractors' State License Board, a separate enforcement unit which shall rigorously enforce this chapter prohibiting all forms of unlicensed activity.

(b) Persons employed as deputy registrars in this unit and designated by the Director of Consumer Affairs are not peace officers and are not entitled to safety member retirement benefits. They do not have the power of arrest. However, they may issue a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code.

SEC. 2. Section 7027.1 of the Business and Professions Code is amended to read:

7027.1. (a) It is a misdemeanor for any person to advertise for construction or work of improvement covered by this chapter unless that person holds a valid license under this chapter in the classification so advertised, except that a licensed building or engineering contractor may advertise as a general contractor.

(b) "Advertise," as used in this section, includes, but not by way of limitation, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing of any sign or marking on or in any building or structure, or in any newspaper, magazine, or by airwave transmission, or in any directory under a listing for construction or work of improvement covered by this chapter, with or without any limiting qualifications.

(c) A violation of this section is punishable by a fine of not less than seven hundred dollars ($700) and not more than one thousand dollars ($1,000), which fine shall be in addition to any other punishment imposed for a violation of this section.

(d) If upon investigation, the registrar has probable cause to believe that an unlicensed individual is in violation of this section, the registrar may issue a citation pursuant to Section 7028.7 or 7099.10.

CHAPTER 414

An act to amend Section 564 of the Code of Civil Procedure, to add Section 87104 to the Government Code, to amend Section 436.20 of, and to add Sections 436.42, 436.805, 436.221, 436.222, and 436.29 to, the Health and Safety Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. The Legislature finds and declares that the provisions added by Section 7 of this act are declaratory of existing law regarding the Cal-Mortgage Loan Insurance Program and do not constitute a change to the California Health Facility Construction Loan Insurance Law.

By this act, the Legislature intends to clarify the existing rights of the Office of Statewide Health Planning and Development pursuant to its regulatory agreement, contract of insurance, and other contractual agreements developed under the Cal-Mortgage Loan Insurance Program and pursuant to Chapter 4 (commencing with Section 436) of the Health and Safety Code. The office shall have these rights notwithstanding the requirements of Sections 580a, 580b, 580d, and 726 of the Code of Civil Procedure in order that the office may expeditiously and efficiently enforce its statutory mandate to provide an insurance program for health facility construction, improvement, and expansion loans, at no cost to the state.

SEC. 2. Section 564 of the Code of Civil Procedure is amended to read:

564. (a) A receiver may be appointed, in the manner provided in this chapter, by the court in which an action or proceeding is pending in any case in which the court is empowered by law to appoint a receiver.

(b) In superior court a receiver may be appointed by the court in which an action or proceeding is pending, or by a judge thereof, in the following cases:

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the

creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

(2) In an action by a secured lender for the foreclosure of the deed of trust or mortgage and sale of the property upon which there is a lien under a deed of trust or mortgage, where it appears that the property is in danger of being lost, removed, or materially injured, or that the condition of the deed of trust or mortgage has not been performed, and that the property is probably insufficient to discharge the deed of trust or mortgage debt.

(3) After judgment, to carry the judgment into effect.

(4) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or pursuant to Title 9 (commencing with Section 680.010) (enforcement of judgments), or after sale of real property pursuant to a decree of foreclosure, during the redemption period, to collect, expend, and disburse rents as directed by the court or otherwise provided by law.

(5) In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

(6) In an action of unlawful detainer.

(7) At the request of the Public Utilities Commission pursuant to Section 855 of the Public Utilities Code.

(8) In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

(9) At the request of the Office of Statewide Health Planning and Development, or the Attorney General, pursuant to Section 436.222 of the Health and Safety Code.

(c) A receiver may be appointed, in the manner provided in this chapter, including, but not limited to, Section 566, by the superior court in an action brought by a secured lender to enforce the rights provided in Section 2929.5 of the Civil Code, to enable the secured lender to enter and inspect the real property security for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security. The secured lender shall not abuse the right of entry and inspection or use it to harass the borrower or tenant of the property. Except in case of an emergency, when the borrower or tenant of the property has abandoned the premises, or if it is impracticable to do so, the secured lender shall give the borrower or tenant of the property reasonable notice of the secured lender's intent to enter and shall enter only during the borrower's or tenant's normal business hours. Twenty-four hours' notice shall be presumed to be reasonable notice in the absence of evidence to the contrary.

(d) Any action by a secured lender to appoint a receiver pursuant to this section shall not constitute an action within the meaning of subdivision (a) of Section 726.

(e) For purposes of this section:

(1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(2) "Hazardous substance" means (A) any "hazardous substance" as defined in subdivision (f) of Section 25281 of the Health and Safety Code as effective on January 1, 1991, or as subsequently amended, (B) any "waste" as defined in subdivision (d) of Section 13050 of the Water Code as effective on January 1, 1991, or as subsequently amended, or (C) petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(3) "Real property security" means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms "separate interest," "common area," and "common interest development" are defined in Section 1351 of the Civil Code, or real property consisting of one acre or less which contains 1 to 15 dwelling units.

(4) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater.

(5) "Secured lender" means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor-in-interest of the beneficiary or mortgagee to the deed of trust or mortgage.

SEC. 3. Section 87104 is added to the Government Code, to read:

87104. (a) No public official of a state agency shall, for compensation, act as an agent or attorney for, or otherwise represent, any other person by making any formal or informal appearance before, or by making any oral or written communication to, his or her state agency or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing action on a contract, grant, loan, license, permit, or other entitlement for use.

(b) For purposes of this section, a "public official" is any person defined in Section 82048, and every member of any advisory committee of a state agency, whether the committee is created by statute or otherwise.

SEC. 4. Section 436.42 is added to the Health and Safety Code, immediately following Section 436.4, to read:

436.42. Applications submitted to the office shall be signed under penalty of perjury by the applicant.

SEC. 5. Section 436.805 is added to the Health and Safety Code, immediately following Section 436.8, to read:

436.805. A pledge by or to the office of, or the grant to the office of a security interest in, revenues, moneys, accounts, accounts receivable, contract rights, general intangibles, documents, instruments, chattel paper, and other rights to payment of whatever kind made by or to the office pursuant to the authority granted in this chapter shall be valid and binding from the time the pledge is made for the benefit of pledgees and successors thereto. The revenues, moneys, accounts, accounts receivable, contract rights, general intangibles, documents, instruments, chattel paper, and other rights to payment of whatever kind pledged by or to the office or its assignees shall immediately be subject to the lien of the pledge without physical delivery or further act. The lien of such pledge shall be valid and binding against all parties, irrespective of whether the parties have notice of the lien. The indenture, trust agreement, resolution, or another instrument by which such pledge is created need not be recorded or the security interest otherwise perfected.

SEC. 6. Section 436.20 of the Health and Safety Code is amended to read:

436.20. (a) All debentures issued under this chapter to any lender or bondholder shall be executed in the name of the fund as obligor, shall be signed by the State Treasurer, and shall be negotiable. Pursuant to Sections 436.13 and 436.14, all debentures shall be dated as of the date of the institution of foreclosure proceedings or as of the date of the acquisition of the property after default by other than foreclosure, or as of another date as the office, in its discretion, may establish. The debentures shall bear interest from that date at a rate approved by the State Treasurer, equal to either the rate applicable to the most recent issue of State General Fund bonds or that specified in Section 436.14, which shall be payable on the dates as the office, in its discretion, may establish except in the case of bonds or other evidences of indebtedness as specified in Section 436.14, and shall have the same maturity date as the loan which they insured. All debentures shall be exempt, both as to principal and interest, from all taxation now or hereafter imposed by the state or local taxing agencies, shall be paid out of the fund, which shall be primarily liable therefor, and shall be, pursuant to Section 4 of Article XVI of the California Constitution, fully and unconditionally guaranteed as to principal and interest by the State of California, which guaranty shall be expressed on the face of the debentures. In the event that the fund fails to pay upon demand, when due, the principal of or interest on any debentures issued under this chapter, the State Treasurer shall pay to the holders the amount thereof which is authorized to be appropriated, out of any

money in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the State Treasurer shall succeed to all the rights of the holders of the debentures. The fund shall be liable for repayment to the Treasury of any money paid therefrom pursuant to this section in accordance with procedures jointly established by the State Treasurer and the office.

(b) In the event of a default, any debenture issued under this article shall be paid on a par with general obligation bonds issued by the state.

SEC. 7. Section 436.221 is added to the Health and Safety Code, immediately following Section 436.22, to read:

436.221. Notwithstanding any other provision of law, if, prior to foreclosing on any collateral provided by a borrower, the office institutes a judicial proceeding or takes any action against a borrower to enforce compliance with the obligations set out in the regulatory agreement, the contract of insurance, or any other contractual loan closing document or law, including, but not limited to, Section 436.222, that remedy or action shall not constitute an action within the meaning of subdivision (a) of Section 726 of the Code of Civil Procedure, or in any way constitute a violation of the intent or purposes of Section 726 of the Code of Civil Procedure, or constitute a money judgment or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or subdivision (b) of Section 726 of the Code of Civil Procedure. However, these provisions of the Code of Civil Procedure shall apply to any judicial proceeding instituted, or nonjudicial foreclosure action taken by the office to collect the principal and interest due on the loan with the borrower.

SEC. 8. Section 436.222 is added to the Health and Safety Code, immediately following Section 436.221, to read:

436.222. In fulfilling the purposes of this article, as set forth in Section 436.1, and upon making a determination that the financial status of a borrower may jeopardize a borrower's ability to fulfill its obligations under any insured loan transaction so as to threaten the economic interest of the office in the borrower or to jeopardize the borrower's ability to continue to provide needed healthcare services in its community, including, but not limited to, a declaration of default under any contract related to the transaction, the borrower missing any payment to its lender, or the borrower's accounts payable exceeding three months, the office may assume or direct managerial or financial control of the borrower in any or all of the following ways:

(a) The office may supervise and prescribe the activities of the borrower in the manner and under the terms and conditions as the office may stipulate in any contract with the borrower.

(b) Notwithstanding the provisions of the articles of incorporation or other documents of organization of a nonprofit corporation borrower, this control may be exercised through the removal and appointment by the office of members of the governing body of the borrower sufficient such that the new members constitute a voting

majority of the governing body.

(c) In the event the borrower is a nonprofit corporation or a political subdivision, the office may request the Secretary of the Health and Welfare Agency to appoint a trustee, this trustee shall have full and complete authority of the borrower over the insured project, including all property on which the office holds a security interest. No trustee shall be appointed unless approved by the office. A trustee appointed by the secretary pursuant to this subdivision may exercise all the powers of the officers and directors of the borrower, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the office or a trustee by reason of their exercising the powers of the officers and directors of a borrower pursuant to the direction of, or with the approval of, the secretary.

(d) The office may institute any action or proceeding, or the office may request the Attorney General to institute any action or proceeding against any borrower, to obtain injunctive or other equitable relief, including the appointment of a receiver for the borrower or the borrower's assets, in the superior court in and for the county in which the assets or a substantial portion of the assets are located. The proceeding under this section for injunctive relief shall conform with the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the office shall not be required to allege facts necessary to show lack of adequate remedy at law, or to show irreparable loss or damage. Injunctive relief may compel the borrower, its officers, agents, or employees to perform each and every provision contained in any regulatory agreement, contract of insurance, or any other loan closing document to which the borrower is a party, or any obligation imposed on the borrower by law, and require the carrying out of any and all covenants and agreements and the fulfillment of all duties imposed on the borrower by law or such documents.

A receiver may be appointed pursuant to Chapter 5 (commencing with Section 564) of Title 7 of Part 2 of the Code of Civil Procedure. Upon a proper showing, the court shall grant the relief provided by law and requested by the office or the Attorney General. No receiver shall be appointed unless approved by the office. A receiver appointed by the superior court pursuant to this subdivision and Section 564 of the Code of Civil Procedure may, with the approval of the court, exercise all of the powers of the officers and directors of the borrower, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the office, the Attorney General, or a receiver by reason of their exercising the powers of the officers and directors of a borrower pursuant to the order of, or with the approval of, the superior court.

(e) The borrower shall inform the office in advance of all meetings of its governing body. The borrower shall not exclude the office from attending any meeting of the borrower's governing body.

SEC. 9. Section 436.29 is added to the Health and Safety Code,

immediately following Section 436.28, to read:

436.29. The Health Facility Construction Loan Insurance Fund, established pursuant to Section 436.26, shall be a trust fund and neither the fund nor the interest or other earnings generated by the fund shall be used for any purpose other than those purposes authorized by this chapter.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 11. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

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

In order that as soon as possible state public officials be prohibited from representing other for compensation before their state agencies and that the California Health Facility Construction Loan Insurance Program be given protection from the one-action rule governing loan defaults, and be able to enforce its loan covenants to the maximum protection of the full faith and credit of the General Fund, it is necessary that this act take effect immediately.

CHAPTER 415

An act to amend Section 4068 of, and to repeal Article 3 (commencing with Section 3680) of Chapter 6 of Part 1 of Division 9 of, the Family Code, relating to family law.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Article 3 (commencing with Section 3680) of Chapter 6 of Part 1 of Division 9 of the Family Code is repealed.

SEC. 2. Section 4068 of the Family Code is amended to read:

4068. (a) The Judicial Council may develop the following:

(1) Model worksheets to assist parties in determining the

approximate amount of child support due under the formula provided in subdivision (a) of Section 4055 and the approximate percentage of time each parent has primary physical responsibility for the children.

(2) A form to assist the courts in making the findings and orders required by this article.

(b) The Judicial Council, in consultation with representatives of the State Department of Social Services, the California Family Support Council, the Senate Judiciary Committee, the Assembly Judiciary Committee, the Family Law Section of the State Bar of California, a legal services organization providing representation on child support matters, a custodial parent group, and a noncustodial parent group, shall develop a simplified income and expense form for determining child support under the formula provided in subdivision (a) of Section 4055, by June 1, 1995. The Judicial Council, also in consultation with these groups, shall develop factors to use to determine when the simplified income and expense form may be used and when the standard income and expense form must be used.

CHAPTER 416

An act to add Section 5028 to the Penal Code, relating to undocumented aliens.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 5028 is added to the Penal Code, to read:

5028. (a) Upon the entry of any person who is an undocumented alien subject to deportation into a facility operated by the Department of Corrections, and at least every year thereafter, the Director of Corrections shall inform the person that he or she may apply to be transferred to serve the remainder of his or her prison term in his or her country of origin.

(b) The Department of Corrections shall implement and maintain procedures to process applications for the transfer of prisoners to their countries of origin under subdivision (a), and shall forward the applications to the Board of Prison Terms for appropriate action.

(c) The Department of Corrections may pay any foreign country to which an inmate is transferred under subdivision (a) no more than two thousand dollars ($2,000) from moneys appropriated by the Legislature for that purpose for every year that the inmate is imprisoned until he or she has completed the prison term which he or she began serving in this state.

CHAPTER 417

An act to amend Section 74808 of, to add Section 74810 to, and to repeal Sections 73484, 73706, and 74804 of, the Government Code, relating to courts.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 73484 of the Government Code is repealed.

SEC. 2. Section 73706 of the Government Code is repealed.

SEC. 3. Section 74804 of the Government Code is repealed.

SEC. 4. Section 74808 of the Government Code is amended to read:

74808. Whenever the salary of a related class, or classes, of San Joaquin County employees is adjusted, the salary of the following classes may be adjusted by a percentage not to exceed the percentage of adjustment granted to the class, or classes, deemed by the board of supervisors to be related:

(a) Deputy clerk I.
(b) Deputy clerk II.
(c) Deputy clerk III.
(d) Judicial secretary.
(e) Municipal Courtroom Clerks.
(f) Clerk/Administrator.
(g) Courtroom calendar coordinator.
(h) Deputy marshal.
(i) Senior deputy marshal.
(j) Director of court operations.
(k) Secretary.
(*l*) Accounting technician II.
(m) Specialist clerk.
(n) Court reporter.
(o) Office systems analyst.

All adjustments to the salaries of the above-named classes shall be effective as of the same date as the adjustment for the class, or classes, deemed to be related, and shall be effective only until January 1 of the second year following the year in which the adjustment is made, unless earlier ratified by the Legislature.

SEC. 5. Section 74810 is added to the Government Code, to read:

74810. (a) (1) Because cost savings or operational efficiencies, or both, can be realized by consolidation of the three separate marshal's offices within the county, there shall be one marshal for San Joaquin County designated as the Marshal of San Joaquin County. The marshal shall be deemed the head of the department denominated as the San Joaquin County Marshal's Office. It is the intent of this section to create a unified, appointive marshal's office.

(2) The office shall be responsible for all municipal court services, including bailiff duties in such courts, service of process and other papers as required by such courts, and service of criminal warrants issued by such courts. The marshal shall have the rights, duties, and powers imposed upon marshals generally by law.

(b) (1) The marshal shall be appointed by, and serve at the pleasure of, the majority of judges of all municipal courts in the county. When making such appointment, the judges shall consider, but shall not be bound by, the recommendation of a committee comprised of the presiding judges of each municipal court in the county.

(2) The marshal initially appointed pursuant to this section shall be selected from those individuals who hold the position of marshal of one of the municipal courts of the county immediately prior to the operative date of subdivision (a).

(c) (1) The salary range of the marshal originally appointed pursuant to this section shall be at a minimum level of salary range 69E ($2,430.40 biweekly). The salary range for any individual appointed marshal after the original appointment of the marshal pursuant to this section shall be set by the board of supervisors of the county.

(2) Until the end of the term of office to which he or she was elected immediately prior to the operative date of this section, the marshal initially appointed pursuant to this section shall receive all benefits currently received by the elected department heads of the county. Thereafter, the marshal shall receive all benefits received by appointed department heads of the county. The specific terms and conditions of the benefits to be received by the marshal initially appointed pursuant to this section, including the rates of accrual and accumulation, shall be set forth in a memorandum of understanding between the county and the three elected marshals of the county which memorandum shall be adopted prior to the operative date of subdivision (a).

(3) Unless otherwise provided for in this section, salary and benefit adjustments for the marshal shall be made by the board of supervisors of the county.

(d) (1) The marshal shall appoint, as necessary, an assistant marshal or assistant marshals who shall serve at the pleasure of the marshal.

(2) The marshal shall initially appoint two assistant marshals who shall serve at the pleasure of the marshal, but who shall not serve longer than is provided for in subdivision (h). The two assistant marshals initially appointed pursuant to this section shall be selected from those individuals who hold the position of marshal of one of the municipal courts of the county immediately prior to the operative date of subdivision (a). Upon the first occurrence of a vacancy in an assistant marshal's position, that position shall cease to exist.

(e) (1) The salary range of the two assistant marshals appointed pursuant to paragraph (2) of subdivision (d) shall be at a minimum

level of salary range 66.8E ($2,089.60 biweekly). The salary differential between the marshal and the two assistant marshals initially appointed pursuant to paragraph (2) of subdivision (d) shall be maintained until the vacancy in the second of the original two assistant marshal positions created by this section. The salary range for any individual appointed to the assistant marshal position after the vacancy of the second of the original two assistant marshal positions created by this section shall be set by the board of supervisors of the county.

(2) Until the end of the term of office to which they were elected immediately prior to the operative date of subdivision (a), the two assistant marshals appointed pursuant to this subdivision shall receive all benefits currently received by the elected department heads of the county. The specific terms and conditions of the benefits to be received by the two assistant marshals initially appointed pursuant to paragraph (2) of subdivision (d), including the rates of accrual and accumulation, shall be set forth in a memorandum of understanding between the county and the three elected marshals of the county which memorandum shall be adopted prior to the operative date of subdivision (a). Thereafter, they shall receive the benefits received by appointed department heads of the county. After the occurrence of a vacancy in the remaining assistant marshal position, any individual appointed to fill that position shall receive all benefits received by assistant department heads of the county.

(3) Unless otherwise provided for in this subdivision, salary and benefit adjustments for assistant marshal positions shall be made by the board of supervisors of the county.

(f) The office of the marshal shall be maintained in the Stockton Judicial District. A branch office of the marshal shall be maintained in the Lodi Judicial District and one in the Manteca-Ripon-Escalon-Tracy Judicial District.

(g) (1) All personnel of the Lodi Marshal's Office, the Manteca-Ripon-Escalon-Tracy Marshal's Office, and the Stockton Marshal's Office on the operative date of this section shall automatically become members of the consolidated San Joaquin County Marshal's Office at their existing classifications, salaries, and benefits. All personnel assigned to the separate marshal's offices as of the operative date of this section shall not lose peace officer status, or be demoted or otherwise adversely affected by the consolidation. All county municipal court marshal's office civil service time of personnel affected by this consolidation shall be counted toward county civil service seniority.

(2) Permanent employees described in this section shall be deemed qualified, and no other qualifications shall be required for employment or retention as a result of this consolidation. Probationary employees on the operative date of subdivision (a) shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(h) Notwithstanding any other provisions of law, the marshal originally appointed pursuant to this section, and the two assistant marshals originally appointed pursuant to paragraph (2) of subdivision (d), shall be retired not later than the last day of the calendar month in which such individuals attain age 65.

(i) Subdivision (a) shall become operative on January 2, 1995, and on that date the three elected marshal positions in San Joaquin County are abolished.

SEC. 6. Sections 1 to 3, inclusive, of this act shall become operative on January 2, 1995.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 418

An act to add Section 21080.24 to the Public Resources Code, relating to environmental quality.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 21080.24 is added to the Public Resources Code, to read:

21080.24. This division does not apply to the issuance, modification, amendment, or renewal of any permit by an air pollution control district or air quality management district pursuant to Title V, as defined in Section 39053.3 of the Health and Safety Code, or pursuant to a district Title V program established under Sections 42301.10, 42301.11, and 42301.12 of the Health and Safety Code, unless the issuance, modification, amendment, or renewal authorizes a physical or operational change to a source or facility.

(b) Nothing in this section is intended to result in the application of this division to any physical or operational change which, prior to January 1, 1995, was not subject to this division.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the

provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 419

An act to amend Sections 39005 and 39006 of the Education Code, relating to school facilities.

[Approved by Governor August 31, 1994. Filed with Secretary of State September 1, 1994.]

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

SECTION 1. Section 39005 of the Education Code is amended to read:

39005. (a) The requirements set forth in this section are designed to promote the safety of pupils, comprehensive community planning, and greater educational usefulness of schoolsites.

(b) Before acquiring title to property for a new schoolsite, or for an addition to a present site, as to any site that is within two miles, measured by air line, of any point on an airport runway, or a runway proposed by an airport master plan, that is nearest the site, the governing board of each school district, including any district governed by a city board of education, shall give the Department of Transportation written notice of the proposed acquisition and shall submit any information required by the department. If the Department of Transportation is no longer in operation, the school district governing board shall, in lieu of notifying the Department of Transportation, notify the United States Department of Transportation or any other appropriate agency, in writing, of the proposed acquisition for the purpose of obtaining from the department or other agency any information or assistance that it may desire to give.

(c) The Department of Transportation shall investigate the proposed site and, within 30 working days after receipt of the notice, shall submit to the governing board a written report and its recommendations concerning acquisition of the site. In developing its recommendations, the department shall take into consideration both of the following:

(1) Specific characteristics of the airport, including the number of flights handled each year, the type of aircraft that uses the airport, and any other relevant aspects of the usage of the airport facilities.

(2) Whether the boundaries of the city limits within the school district proposing the schoolsite fall completely within that two-mile radius.

(d) Nothing in this section shall be construed in any way as limiting the authority of the department to consider other factors in developing its recommendations.

(e) The governing board shall not acquire title to the property until the report of the Department of Transportation has been received. If the report does not favor the acquisition of the property for a schoolsite or an addition to a present schoolsite, the governing board shall not acquire title to the property until 30 days after the department's report is received and until the department's report has been read at a public hearing duly called after 10 days' notice published once in a newspaper of general circulation within the school district or, if there is no newspaper of general circulation within the school district, in a newspaper of general circulation within the county in which the property is located.

SEC. 2. Section 39006 of the Education Code is amended to read:

39006. (a) Notwithstanding Section 39005, immediately after receiving notice of a proposed acquisition of property which is within two miles, measured by air line, of that point on an airport runway, or runway proposed by an airport master plan, which is nearest the site, the Department of Transportation shall make an investigation and report to the school district governing board within 30 working days after receipt of the notice. As part of the investigation, the Department of Transportation shall give notice thereof to the owner and operator of the airport who shall be granted the opportunity to comment upon the proposed schoolsite. In addition, before making its report, the department shall consider both of the following:

(1) Specific characteristics of the airport, including the number of flights handled each year, the type of aircraft that uses the airport, and any other relevant aspects of the usage of the airport facilities.

(2) Whether the boundaries of the city limits within the school district proposing the schoolsite fall completely within that two-mile radius.

(b) Nothing in this section shall be construed in any way as limiting the authority of the department to consider other factors in making its report.

(c) Notwithstanding Section 39005, if the report of the Department of Transportation required by that section does not favor the acquisition of the property for a schoolsite, or an addition to a present schoolsite, the governing body shall not acquire title to the property until 30 days after the department's report is received and until the department's report has been read at a public hearing duly called after 10 days' notice by publication in a newspaper of general circulation within the school district or, if there is no newspaper of general circulation within the school district, in a newspaper of general circulation within the county in which the property is located.

CHAPTER 420

An act to add Section 1875.8 to the Insurance Code, relating to arson, and making an appropriation therefor.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 1875.8 is added to the Insurance Code, to read:

1875.8. (a) There is hereby created the Arson Information Reporting System to permit insurers, law enforcement agencies, fire investigative agencies, and district attorneys to deposit arson case information in a common data base within the Department of Justice. The State Fire Marshal shall oversee the establishment, operation, and maintenance of the Arson Information Reporting System. The Department of Justice shall implement the Arson Information Reporting System in consultation with the State Fire Marshal.

(b) The purpose of the data base is to identify utilization patterns by individual claimants and the methods of operation of individuals, groups, or businesses engaged in the commission of arson, and to prevent the commission of insurance fraud by arson.

(c) The use of the information deposited pursuant to this article shall be made available to law enforcement agencies, fire investigative agencies, district attorneys, and insurers, via modem, for the purpose of investigating and prosecuting arson and arson-related insurance fraud, or evaluating the validity and payment of fire-related insurance claims. The State Fire Marshal shall establish rules governing the access to, and use of, information and the circumstances under which information may be accessed and corrected.

(d) Any information acquired pursuant to this section shall not be a part of any public record. Except as otherwise provided by law, any authorized governmental agency, an insurer, or an agent authorized by an insurer to act on its behalf, which receives any information furnished pursuant to this section, shall not release that information to public inspection until the time that its release is required in connection with a criminal or civil proceeding.

(e) Information submitted to the State Fire Marshal pursuant to this section concerning active cases shall be confidential.

(f) Nothing in this section shall prohibit the accumulation and public distribution by the bureau of statistical data if that data does not reveal the identity of specific claimants, injured parties, attorneys, physicians, or other service providers.

SEC. 2. (a) There is hereby appropriated from the Insurance Fund the sum of three million dollars ($3,000,000) to the State Fire

Marshal for the implementation of this act. The appropriation made by this section shall not be made from funds deposited in the Insurance Fund pursuant to Section 1872.8 or 1872.83 of the Insurance Code, nor from funds appropriated to the Department of Insurance through the Budget Act of 1994.

(b) The funds appropriated by this section may be expended over the 1994–95, 1995–96, 1996–97, 1997–98, and 1998–99 fiscal years to establish, operate, and maintain the Arson Information and Reporting System created pursuant to Section 1875.8 of the Insurance Code.

CHAPTER 421

An act to amend Sections 451, 454, and 1203.06 of, and to add Sections 451.1, 451.5, and 452.1 to, the Penal Code, relating to arson, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 451 of the Penal Code is amended to read:

451. A person is guilty of arson when he or she willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels, or procures the burning of, any structure, forest land, or property.

(a) Arson that causes great bodily injury is a felony punishable by imprisonment in the state prison for five, seven, or nine years.

(b) Arson that causes an inhabited structure or inhabited property to burn is a felony punishable by imprisonment in the state prison for three, five, or eight years.

(c) Arson of a structure or forest land is a felony punishable by imprisonment in the state prison for two, four, or six years.

(d) Arson of property is a felony punishable by imprisonment in the state prison for 16 months, two, or three years. For purposes of this paragraph, arson of property does not include one burning or causing to be burned his or her own personal property unless there is an intent to defraud or there is injury to another person or another person's structure, forest land, or property.

(e) In the case of any person convicted of violating this section while confined in a state prison, prison road camp, prison forestry camp, or other prison camp or prison farm, or while confined in a county jail while serving a term of imprisonment for a felony or misdemeanor conviction, any sentence imposed shall be consecutive to the sentence for which the person was then confined.

SEC. 2. Section 451.1 is added to the Penal Code, to read:

451.1. (a) Notwithstanding any other law, any person who is

convicted of a felony violation of Section 451 shall be punished by a three-, four-, or five-year enhancement if one or more of the following circumstances is found to be true:

(1) The defendant has been previously convicted of a felony violation of Section 451 or 452.

(2) A firefighter, peace officer, or other emergency personnel suffered great bodily injury as a result of the offense. The additional term provided by this subdivision shall be imposed whenever applicable, including any instance in which there is a violation of subdivision (a) of Section 451.

(3) The defendant proximately caused great bodily injury to more than one victim in any single violation of Section 451. The additional term provided by this subdivision shall be imposed whenever applicable, including any instance in which there is a violation of subdivision (a) of Section 451.

(4) The defendant proximately caused multiple structures to burn in any single violation of Section 451.

(5) The defendant committed arson as described in subdivision (a), (b), or (c) of Section 451 and the arson was caused by use of a device designed to accelerate the fire or delay ignition.

(b) The additional term specified in subdivision (a) shall not be imposed unless the existence of any fact required under this section shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

SEC. 3. Section 451.5 is added to the Penal Code, to read:

451.5. (a) Any person who willfully, maliciously, deliberately, with premeditation, and with intent to cause injury to one or more persons or to cause damage to property under circumstances likely to produce injury to one or more persons or to cause damage to one or more structures or inhabited dwellings, sets fire to, burns, or causes to be burned, or aids, counsels, or procures the burning of any residence, structure, forest land, or property is guilty of aggravated arson if one or more of the following aggravating factors exists:

(1) The defendant has been previously convicted of arson on one or more occasions within the past 10 years.

(2) (A) The fire caused property damage and other losses in excess of five million dollars ($5,000,000).

(B) In calculating the total amount of property damage and other losses under subparagraph (A), the court shall consider the cost of fire suppression. It is the intent of the Legislature that this paragraph be reviewed within five years to consider the effects of inflation on the dollar amount stated herein. For that reason, this paragraph shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

(3) The fire caused damage to, or the destruction of, five or more inhabited structures.

(b) Any person who is convicted under subdivision (a) shall be punished by imprisonment in the state prison for 10 years to life.

(c) Any person who is sentenced under subdivision (b) shall not be eligible for release on parole until 10 calendar years have elapsed.

SEC. 4. Section 452.1 is added to the Penal Code, to read:

452.1. (a) Notwithstanding any other law, any person who is convicted of a felony violation of Section 452 shall be punished by a one-, two-, or three-year enhancement for each of the following circumstances that is found to be true:

(1) The defendant has been previously convicted of a felony violation of Section 451 or 452.

(2) A firefighter, peace officer, or other emergency personnel suffered great bodily injury as a result of the offense. The additional term provided by this subdivision shall be imposed whenever applicable, including any instance in which there is a violation of subdivision (a) of Section 452.

(3) The defendant proximately caused great bodily injury to more than one victim in any single violation of Section 452. The additional term provided by this subdivision shall be imposed whenever applicable, including any instance in which there is a violation of subdivision (a) of Section 452.

(4) The defendant proximately caused multiple structures to burn in any single violation of Section 452.

(b) The additional term specified in subdivision (a) of Section 452.1 shall not be imposed unless the existence of any fact required under this section shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

SEC. 5. Section 454 of the Penal Code is amended to read:

454. (a) Every person who violates Section 451, 452, or subdivision (b) of Section 453 during and within an area of any of the following, when proclaimed by the Governor, shall be punished by imprisonment in the state prison, as specified in subdivision (b):

(1) A state of insurrection pursuant to Section 143 of the Military and Veterans Code.

(2) A state of emergency pursuant to Section 8625 of the Government Code.

(b) Any person who is described in subdivision (a) and who violates subdivision (a), (b), or (c) of Section 451 shall be punished by imprisonment in the state prison for five, seven, or nine years. All other persons who are described in subdivision (a) shall be punished by imprisonment in the state prison for three, five, or seven years.

(c) Probation shall not be granted to any person who is convicted of violating this section, except in unusual cases where the interest of justice would best be served.

SEC. 6. Section 1203.06 of the Penal Code is amended to read:

1203.06. Notwithstanding the provisions of Section 1203:

(a) Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons:

(1) Any person who personally used a firearm during the

commission or attempted commission of any of the following crimes:

(A) Murder.

(B) Robbery, in violation of Section 211.

(C) Kidnapping, in violation of Section 207 or 209.5.

(D) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(E) Burglary of the first degree, as defined in Section 460.

(F) Except as provided in Section 1203.065, rape in violation of subdivision (2) of Section 261.

(G) Assault with intent to commit rape or sodomy, in violation of Section 220.

(H) Escape, in violation of Section 4530 or 4532.

(I) A felony violation of Section 136.1 or 137.

(J) Carjacking, in violation of Section 215.

(2) Any person previously convicted of a felony specified in subparagraphs (A) to (H), inclusive, or subparagraph (J), of paragraph (1), or assault with intent to commit murder under former Section 217, who is convicted of a subsequent felony and who was personally armed with a firearm at any time during its commission or attempted commission or was unlawfully armed with a firearm at the time of his or her arrest for the subsequent felony.

(3) Aggravated arson, in violation of Section 451.5.

(b) (1) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(3) As used in subdivision (a) "used a firearm" means to display a firearm in a menacing manner, to intentionally fire it, or to intentionally strike or hit a human being with it.

(4) As used in subdivision (a) "armed with a firearm" means to knowingly carry a firearm as a means of offense or defense.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to establish a meaningful deterrent to the increase in the incidence of arson throughout the state and to reduce the devastation created therefrom, it is necessary that this act take effect immediately.

CHAPTER 422

An act to amend Sections 32320, 76300, 76330, 76355, 94302, 94310, 94311, 94311.1, 94311.4, 94312, 94312.2, and 94330 of, to add Section 94311.8 to, and to repeal Section 94319.7 of, the Education Code, and to amend Sections 11011.21, 11126, and 15814.21 of the Government Code, relating to postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 32320 of the Education Code is amended to read:

32320. No state-owned college, university, community college, or other school shall charge any tuition or fees, including enrollment fees, registration fees, differential fees, or incidental fees to any of the following:

(a) Any dependent eligible to receive assistance under Article 2 (commencing with Section 890) of Chapter 4 of Division 4 of the Military and Veterans Code.

(b) Any child of any veteran of the United States military who has a service-connected disability, has been killed in service, or has died of a service-connected disability, where the annual income of the child, including the value of any support received from a parent, does not exceed seven thousand dollars ($7,000).

(c) Notwithstanding Section 893 of the Military and Veterans Code, the Department of Veterans Affairs may determine the eligibility for fee waivers for a child described in subdivision (b).

(d) Any dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty, and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

Nothing contained in this section shall prevent the Regents of the University of California from charging to, and collecting from, nonresident students an admission fee and rate of tuition, nor shall anything in this section prevent the charging and collecting of fees required of nonresident students admitted to a community college or to a state university under the jurisdiction of the Trustees of the California State University.

This section shall not apply to a dependent of a veteran within the meaning of paragraph (4) of subdivision (a) of Section 890 of the

Military and Veterans Code.

(e) This section shall become operative on July 1, 1994.

SEC. 2. Section 76300 of the Education Code, as amended by Section 10 of Chapter 153 of the Statutes of 1994, is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) The fee prescribed by this section shall be thirteen dollars ($13) per unit per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving

spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

(k) This section shall remain in effect only until July 1, 1995, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 1995, deletes or extends that date.

SEC. 3. Section 76330 of the Education Code, as amended by Section 11 of Chapter 153 of the Statutes of 1994, is amended to read:

76330. (a) The governing board of each community college district shall charge a fee of fifty dollars ($50) per semester unit, or the quarter unit equivalent, to each student who previously has been awarded a baccalaureate or graduate degree from any public postsecondary educational institution or any private postsecondary educational institution approved to operate by the Council for Private Postsecondary and Vocational Education, accredited by an agency recognized by the United States Department of Education, or operated pursuant to Section 94303. Any student charged a fee pursuant to this section shall be exempt from the fees required pursuant to Section 76300.

(b) The governing board shall exempt from subdivision (a), and charge the fees specified in Section 76300 to, a student who is any of the following:

(1) A dislocated worker, as certified by a state agency in accordance with Subchapter III of the federal Job Training

Partnership Act (29 U.S.C. Sec. 1651 et seq.).

(2) A displaced homemaker, as defined in accordance with the Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1001 et seq.).

(3) A recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(4) An enrollee in a course offered pursuant to a contract between the community college and a public or private entity if (A) the contract provides for the payment by the public or private entity of all costs associated with the course and (B) full-time equivalent student enrollment in the course is not counted for the purpose of determining district or statewide apportionment.

(5) A student who demonstrates financial need in excess of the amount of the total fee payable pursuant to subdivision (a) in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid.

(6) A student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(c) Nonresident students who pay nonresident tuition shall be exempt from subdivision (a).

(d) The governing board of a community college district may require each student not required to pay the fee charged pursuant to subdivision (a) to file a written oath or affirmation, at the time of enrollment, that he or she either does not have a baccalaureate degree or higher degree or is eligible for an exemption.

(e) It is the intent of the Legislature that governing boards conduct selective audits of any oath or affirmation filed by students pursuant to subdivision (d). If any audit conducted under this subdivision results in a finding by the community college district that a student owes additional fees pursuant to this section, the district may require the student to pay the additional fees, plus an amount not to exceed two times the additional fees.

(f) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by each district from charging a fee pursuant to this section.

(g) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(h) It is the further intent of the Legislature that students who previously have not been awarded a baccalaureate or graduate degree be given priority for enrollment.

(i) Notwithstanding subdivision (c) of Section 84750, decreases in the 1992–93 fiscal year in credit full-time equivalent students (FTES)

resulting from the implementation of this section shall not result in any reduction in revenue for the 1993–94 fiscal year. Decreases in FTES in the 1992–93 fiscal year shall result in a revenue reduction over the three-year period beginning with the 1994–95 fiscal year, except that community college districts shall be entitled to restore any reductions in apportionment revenue if there is a subsequent increase in FTES. For purposes of this paragraph, any revenue loss associated with decreases in FTES shall be distributed on a district-by-district basis. District revenue loss shall not be distributed on a statewide average basis.

(j) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 4. Section 76355 of the Education Code is amended to read:

76355. (a) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than ten dollars ($10) for each semester, seven dollars ($7) for summer school, seven dollars ($7) for each intersession of at least four weeks, or seven dollars ($7) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both.

Commencing with the semester or quarter that begins after January 1, 1993, the governing board of each community college district may increase this fee by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever that calculation produces an increase of one dollar ($1) above the existing fee, the fee may be increased by one dollar ($1).

(b) If pursuant to this section a fee is required, the governing board of the district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional.

(c) The governing board of a district maintaining a community college shall adopt rules and regulations that exempt the following students from any fee required pursuant to subdivision (a):

(1) Students who depend exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization.

(2) Students who are attending a community college under an approved apprenticeship training program.

(3) Low-income students, including those students receiving financial aid pursuant to subdivision (g) or (h) of Section 76300.

(d) All fees collected pursuant to this section shall be deposited in the fund of the district designated by the California Community Colleges Budget and Accounting Manual. These fees shall be expended only to provide health services as specified in regulations adopted by the board of governors.

Authorized expenditures shall not include, among other things,

athletic trainers' salaries, athletic insurance, medical supplies for athletics, physical examinations for intercollegiate athletics, ambulance services and the salaries of health professionals for athletic events, any deductible portion of accident claims filed for athletic team members, or any other expense that is not available to all students. No student shall be denied a service supported by student health fees on account of participation in athletic programs.

(e) Any community college district that provided health services in the 1986–87 fiscal year shall maintain health services, at the level provided during the 1986–87 fiscal year, in the 1987–88 fiscal year, and each fiscal year thereafter. If the cost to maintain that level of service exceeds the limits specified in subdivision (a), the excess cost shall be borne by the district.

(f) A district that begins charging a health fee during the 1992–93 fiscal year, or any fiscal year thereafter, may use funds for startup costs from other district funds and recover all or part of those funds from health fees collected within the first five years following the commencement of charging the fee.

(g) The board of governors shall adopt regulations that generally describe the types of health services included in the health service program.

SEC. 5. Section 94302 of the Education Code is amended to read:

94302. As used in this chapter, unless the context requires otherwise, the following definition shall apply:

(a) "Accredited" means that an institution has been recognized or approved as meeting the standards established by an accrediting agency recognized by the United States Department of Education, or the Committee of Bar Examiners for the State of California. It shall not include those institutions that have applied for accreditation, or are identified by accrediting associations as candidates for accreditation or have provisional accreditation.

(b) "Agency" means any person or business entity, regardless of the form of organization, that employs, or in any manner contracts with, one or more agents. "Agency" does not include an institution.

(c) "Agency approval" means a written document issued by the Council for Private Postsecondary and Vocational Education authorizing a business entity or an institution to engage in the recruitment of students for enrollment in private postsecondary and vocational institutions approved under this chapter.

(d) "Agent" means any person who, at a place away from the institution's premises or site of instruction, for consideration, solicits, promotes, advertises, offers, or attempts to secure enrollment for an institution, refers any person to an institution either for enrollment or to receive a solicitation for enrollment, or accepts application fees or admissions fees for education in an institution. Administrators and faculty who make informational public appearances, but whose primary task does not include service as a paid recruiter, are exempted from this definition.

(e) "Agent's permit" means a nontransferable written document

issued to an agent pursuant to this chapter by the Council for Private Postsecondary and Vocational Education.

(f) "Applicant" means a new institution that has submitted an application but has not been evaluated by the council. An applicant institution shall not enroll students or offer educational services.

(g) "Approval" or "approval to operate" means that the council has determined and certified that an institution meets minimum standards established by the council for integrity, financial stability, and educational quality, including the offering of bona fide instruction by qualified faculty and the appropriate assessment of students' achievement prior to, during, and at the end of its program.

(h) "Branch" means a site located within 50 miles of the main location. Only educational services that are approved at the main location shall be offered at the branch. For the purpose of conducting onsite inspections and evaluations, hotel conference rooms, faculty offices, and homes are not considered branches.

(i) "Certificate of authorization for service" means a written, nontransferable document issued by the council authorizing an individual to be an instructor or administrator in any private vocational postsecondary educational institution in California that is approved under subdivision (a) of Section 94311.

(j) "Change of location" means a move of up to 25 miles of the location at which an institution offers any education, training, or instruction. A change of location of 25 or more miles is deemed the establishment of a new location of instruction requiring a separate approval to operate, unless otherwise provided by the council.

(k) "Correspondence school" or "home study school" means any institution that provides correspondence lessons for study and completion by a student at a location separate from the institution, including those institutions which offer that instruction by correspondence in combination with in-residence instruction.

(*l*) "Council" means the Council for Private Postsecondary and Vocational Education established pursuant to Section 94304.

(m) "Course of study" means either a single course or a set of related courses for which a student enrolls.

(n) "Degree" means any "academic degree" or "honorary degree" or title of any designation, mark, appellation, series of letters or words such as, but not limited to, associate, bachelor, master, doctor, or fellow which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, educational, technological, or professional program of study beyond the secondary school level or is an honorary title conferred for recognition of some meritorious achievement.

(o) "Degree title" means a discipline, major, or subject area of study, the completion of which leads to the award of a degree.

(p) "Diploma" means any "diploma," "certificate," "transcript," "document," or other writing in any language other than a degree which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, educational,

technological, or professional program of study beyond the secondary school level.

(q) "Education," or "education services," or "educational program" includes, but is not limited to, any class, course, or programs of training, instruction, or study.

(r) "Institution" means any private postsecondary educational institution. An "institution" includes its branch and satellite campuses, unless otherwise provided by the council.

(s) "Institutional approval" means an institution that has been evaluated by the council and has been found to be in compliance with the council's standards pursuant to this chapter.

(t) "Instruction" includes any specific, formal arrangement by an institution or its enrollees to participate in learning experiences in which the institution's faculty or contracted instructors present a planned curriculum appropriate to the enrollee's educational program.

(u) "Out-of-state school" means any private postsecondary or vocational educational institution offering career or job training programs, including both an in-residence institution and a home study institution that has its place of instruction or its principal location outside the boundaries of the state, or that offers or conducts courses of instruction or subjects on premises maintained by the school outside the boundaries of the state, or that provides correspondence or home study lesson materials from a location outside the boundaries of this state, or that evaluates completed lesson materials or otherwise conducts its evaluation service from a location outside the boundaries of this state, or that otherwise offers or provides California students with courses of instruction or subjects through activities engaged in or conducted outside the boundaries of the state.

(v) "Person" means a natural person or any business entity, regardless of the form or organization.

(w) "Private postsecondary educational institution" means any person doing business in California that offers to provide or provides, for a tuition, fee, or other charge, any instruction, training, or education primarily to people who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance. The following are not considered to be private postsecondary educational institutions under this chapter:

(1) Institutions exclusively offering instruction at any or all levels from preschool through the 12th grade.

(2) Education solely avocational or recreational in nature, and institutions offering this education exclusively.

(3) Education sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization's membership.

(4) Postsecondary or vocational educational institutions established, operated, and governed by the federal government or by this state, or its political subdivisions.

(5) A nonprofit institution owned, controlled, and operated and maintained by a bona fide church or religious denomination, lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, if the education is limited to instructions in the principles of that church or denomination, or to courses offered pursuant to Section 2789 of the Business and Professions Code, and the diploma or degree is limited to evidence of completion of that education, and the meritorious recognition upon which any honorary degree is conferred is limited to the principles of that church or denomination. Institutions operating under this paragraph shall offer degrees and diplomas only in the beliefs and practices of the denomination, church, or religion. The enactment of this paragraph expresses legislative intent that the state shall not involve itself in the content of degree programs awarded by any institution operating under this paragraph, as long as the institution awards degrees and diplomas only in areas specified in the previous sentence. Institutions operating under this paragraph shall not award degrees in any area of physical science. Any degree or diploma granted in any area of study under these provisions shall contain on its face, in the written description of the title of the degree being conferred, a reference to the theological or religious aspect of the degree's subject area. The enactment of this paragraph is intended to prevent any entity claiming to be a nonprofit institution owned, controlled, and operated and maintained by a bona fide church or religious denomination, lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, from marketing and granting degrees or diplomas that are represented as being linked to their church or denomination but which, in reality, are degrees in secular areas of study.

(x) "Satellite" means an auxiliary classroom located within 50 miles of a branch or the main location. A satellite is a facility whose sole purpose is to function as a teaching site. All of the following shall apply to a satellite:

(1) Only educational services that are approved at the main location shall be offered at the satellite.

(2) The institution shall maintain no permanent records of attendance or academic progress at the satellite.

(3) No solicitation or enrollment of students shall occur at the satellite.

(4) The satellite shall not be identified in any advertising.

For the purpose of conducting onsite inspections and evaluations, hotel conference rooms, faculty offices, and homes are not considered satellites.

(y) (1) "Short-term seminar training" means an educational service consisting of either of the following:

(A) Fifty hours or less of instruction, the total charge for which is less than five hundred dollars ($500).

(B) Instruction approved by a governmental licensing authority to be offered exclusively as continuing education in subjects licensees are required to take as a condition of continued licensure.

(2) "Short-time seminar training" does not include any of the following:

(A) Instruction in how to prepare for, take, or pass a licensing examination or other test qualifying a person for employment.

(B) Instruction in which the institution awards any credits or units other than continuing education units pursuant to instruction described in subparagraph (B) of paragraph (1).

(C) Any educational service, other than instruction described in subparagraph (B) of paragraph (1), consisting of more than 50 hours of instruction or costing five hundred dollars ($500) or more in total charges that is divided or structured into one or more segments that consist of 50 or fewer hours of instruction, the total charge for which is less than five hundred dollars ($500).

(z) "To offer" includes, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging any person, directly or indirectly, in any form, to perform the act described.

(aa) "To operate" an educational institution, or like term, means to establish, keep, or maintain any facility or location in this state where, or from or through which, educational services are offered or educational degrees or diplomas are offered or granted.

SEC. 6. Section 94310 of the Education Code is amended to read:

94310. No private postsecondary educational institution may issue, confer, or award an academic or honorary degree unless the institution meets the requirements of subdivision (a) or (i), as follows:

(a) The institution is approved by the council to operate in California and award degrees. The council shall not issue an approval under subparagraph (A) of paragraph (1) of subdivision (d) or a conditional approval under subparagraph (B) of paragraph (1) of subdivision (d) until it has conducted a qualitative review and assessment of, and has approved, each degree program offered by the institution, and all of the operations of the institution, and has determined all of the following:

(1) The institution has the facilities, financial resources, administrative capabilities, faculty, and other necessary educational expertise and resources to ensure its capability of fulfilling the program or programs for enrolled students.

(2) The faculty are fully qualified to undertake the level of instruction that they are assigned and shall possess appropriate degrees or credentials and have demonstrated professional achievement in the major field or fields offered, in sufficient numbers to provide the educational services.

(3) The education services and curriculum clearly relate to the objectives of the proposed program or programs and offer students the opportunity for a quality education.

(4) The facilities are appropriate for the defined educational

objectives and are sufficient to ensure quality educational services to the students enrolled in the program or programs.

(5) The course of study for which the degree is granted provides the curriculum necessary to achieve its professed or claimed academic objective for higher education, and the institution requires a level of academic achievement appropriate to that degree.

(6) The institution provides adequate student advisement services, academic planning and curriculum development activities, research supervision for students enrolled in Ph.D. programs, and clinical supervision for students enrolled in various health profession programs.

(7) If the institution offers credit for prior experiential learning it may do so only after an evaluation by qualified faculty and only in disciplines within the institution's curricular offerings that are appropriate to the degree to be pursued. The council shall develop specific standards regarding the criteria for awarding credit for prior experiential learning at the graduate level, including the maximum number of hours for which credit may be awarded.

(b) The approval process shall include a qualitative review and assessment of all of the following:

(1) Institutional purpose, mission, and objectives.
(2) Governance and administration.
(3) Curriculum.
(4) Instruction.
(5) Faculty, including their qualifications.
(6) Physical facilities.
(7) Administrative personnel.
(8) Procedures for keeping educational records.
(9) Tuition, fee, and refund schedules.
(10) Admissions standards.
(11) Financial aid policies and practices.
(12) Scholastic regulations and graduation requirements.
(13) Ethical principles and practices.
(14) Library and other learning resources.
(15) Student activities and services.
(16) Degrees offered.

The standards and procedures utilized by the council shall foster the development of high quality, innovative educational programs and emerging new fields of study within postsecondary education. In addition, the standards and procedures utilized by the council shall not unreasonably hinder educational innovation and competition.

It is the intent of the Legislature that the minimum standards for approval for degree-granting institutions established in Section 94310 not exceed the accreditation standards utilized by the Western Association of Schools and Colleges.

(c) The council, at its discretion, may delegate the responsibilities for regulation and oversight of accredited degree-granting law schools to the Committee of Bar Examiners of the State of California, and that accreditation may be accepted by the council in lieu of state

approval.

(d) (1) The council shall conduct a qualitative review and assessment of the institution and all programs offered, including the items listed in subdivision (b), through a comprehensive onsite review process, performed by a qualified visiting committee impaneled by the council for that purpose. Except as provided in subdivision (f) of Section 94330, each institution shall submit a single application for all operations in California, its main location, branches, and satellites. The application shall include a single fee that is institution based and not site based. The visiting committee shall be impaneled by the council within 90 days of the date of the receipt of a completed application and shall be composed of educators, and other individuals with expertise in the areas listed in subdivision (b), from degree-granting institutions legally operating within the state. Within 90 days of the receipt of the visiting committee's evaluation report and recommendations, or any reasonable extension of time not to exceed 90 days, the council shall take one of the following actions:

(A) If the institution is in compliance with this chapter and has not operated within three years before the filing of the application in violation of this chapter then in effect, the council may grant an approval to operate for a period not to exceed five years.

(B) If the institution is in compliance with this chapter, but has operated within three years before the filing of the application in violation of this chapter then in effect, or if the council, in its discretion, determines that an unconditional grant of approval to operate is not in the public interest, the council may grant a conditional approval to operate subject to whatever restrictions the council deems appropriate. The council shall notify the institution of the restrictions or conditions, the bases for the restrictions or conditions, and the right to request a hearing to contest them. Conditional approval shall not exceed two years.

(C) The council may deny the application. If the application is denied, the council may permit the institution to continue offering the course of instruction to students already enrolled or may order the institution to cease instruction and provide a refund of tuition and all other charges to students.

(2) When evaluating an institution whose purpose is to advance postsecondary education through innovative methods, the visiting committee shall comprise educators who are familiar with and receptive to evidence bearing on the educational quality and accomplishments of those methods.

(3) The standards and procedures utilized by the council shall not unreasonably hinder educational innovation and competition.

(4) It is the intent of the Legislature that the council, prior to June 1, 1992, conduct an onsite review of all institutions approved by the Superintendent of Public Instruction between January 1, 1989, and December 31, 1990, that did not receive an onsite review by a visiting committee that included at least one permanent employee of the

Private Postsecondary Education Division of the State Department of Education.

(5) Each institution or instructional program offering education for entry into a health care profession in which the provider has primary care responsibilities shall offer that education within a professional degree program which shall be subject to approval by the council pursuant to this section.

(e) (1) If an institution is not operating in California when it applies for approval to operate for itself or a branch or satellite campus, the institution shall file with its application an operational plan establishing that the institution will satisfy the minimum standards set forth in subdivision (a). The operational plan also shall include a detailed description of the institution's program for implementing the operational plan, including proposed procedures, financial resources, and the qualifications of owners, directors, officers, and administrators employed at the time of the filing of the application. The council may request additional information to enable the council to determine whether the operational plan and its proposed implementation will satisfy these minimum standards.

(2) If the council determines that the operational plan satisfies the minimum standards described in subdivision (a), that the institution demonstrates that it will implement the plan, and that no ground for denial of the application exists, the council shall grant a temporary approval to operate, subject to any restrictions the council reasonably deems necessary to ensure compliance with this chapter, pending a qualitative review and assessment as provided in subdivisions (a) and (b). The council shall inspect pursuant to paragraph (1) of subdivision (d), the institution, or branch or satellite campus if approval is sought for that campus between 90 days and 180 days after operation has begun under the temporary approval to operate. Following receipt of the visiting committee's report, the council shall act as provided in subparagraph (A), (B), or (C) of paragraph (1) of subdivision (d).

(f) If at any time the council determines that an institution has deviated from the standards for approval, the council, after identifying for the institution the areas in which it has deviated from the standards, and after giving the institution due notice and an opportunity to be heard, may place the institution on probation for a prescribed period of time, not to exceed 24 calendar months. During the period of probation, the institution shall be subject to special monitoring. The conditions for probation may include the required submission of periodic reports, as prescribed by the council, and special visits by authorized representatives of the council to determine progress toward total compliance. If, at the end of the probationary period, the institution has not taken steps to eliminate the cause or causes for its probation to the satisfaction of the council, the council may revoke the institution's approval to award degrees and provide notice to the institution to cease its operations.

(g) An institution may not advertise itself as an approved

institution unless each degree program offered by the institution has been approved in accordance with the requirements of this section. The council shall review all operations of the institution, both within and outside of California. The council shall have the authority to conduct site visits outside of California when it deems these visits to be necessary. The council may authorize any institution approved to issue degrees under this section to issue diplomas for the completion of courses of study that are within the institution's approved degree-granting programs.

(h) (1) All institutions operating on December 31, 1990, pursuant to licensure received under subdivision (a) of Section 94310.1 or approval received under Section 94310.2, shall receive approval for a period not to exceed four years. On a specified date prior to January 1, 1995, to be determined by the council, each institution granted approval pursuant to this subdivision shall file a completed application for reapproval pursuant to this section.

(2) All institutions operating on December 31, 1990, pursuant to candidate for approval status received pursuant to Section 94310.2 shall receive candidate for approval status for a period not to exceed two years. On a specified date prior to January 1, 1993, as determined by the council, each institution granted candidate for approval status pursuant to this subdivision shall file a completed application for approval pursuant to this section.

(i) All institutions operating pursuant to authorization received under Section 94310.3 or 94310.4, as in effect on December 31, 1990, shall receive candidate for approval status for a period not to exceed three years. On a specified date prior to January 1, 1994, to be determined by the council, each institution granted candidate for approval status pursuant to this subdivision shall file a completed application for approval pursuant to this section.

(j) Any public or private postsecondary educational institution incorporated in another state that has accreditation from a regional accrediting association recognized by the United States Department of Education at the time of the issuance of a degree, and that is approved by the council, may issue degrees, diplomas, or certificates. Accredited public or private postsecondary educational institutions incorporated in another state shall not offer degrees, diplomas, or certificates in California unless they comply with this subdivision.

(1) The council shall not approve an institution to issue degrees, diplomas, or certificates pursuant to this subdivision until the council has conducted a qualitative review and assessment of, and has approved, the operations of the institution in California, and the council has determined that the institution meets all of the following standards:

(A) The institution has financial resources to ensure the capability of fulfilling the program or programs for enrolled students.

(B) The faculty includes personnel who possess appropriate degrees from institutions accredited by a regional accrediting association recognized by the United States Department of

Education in the degree major field or fields offered, in sufficient number to provide the educational services.

(C) The education services and curriculum clearly relate to the objectives of the proposed program or programs.

(D) The facilities are appropriate for the defined educational objectives and are sufficient to ensure quality educational services to the students enrolled in the program or programs.

(E) The institution has verifiable evidence of academic achievement comparable to that required of graduates of other institutions operating in this state for the program or programs upon which the degree, diploma, or certificate is based.

(2) The council shall grant approved status under this subdivision for a period consistent with the postsecondary educational institution's regional accrediting association, but not to exceed five years.

(3) Institutions approved under this subdivision shall offer in California only programs that the institution can document to have been acknowledged and favorably reviewed by the home regional accrediting association.

(4) In reviewing the out-of-state accredited institutions, the council shall use as guidelines the standards and procedures developed by the special committee created pursuant to paragraph (5) of subdivision (b) of Section 94310.1, as in effect on December 31, 1989, and adopted by the California Postsecondary Education Commission. These standards and procedures were based on all of the following principles:

(A) Following the initial state review, subsequent onsite reviews by the council may be conducted in conjunction with institutional reviews by the regional accrediting association. However, if there is substantial evidence that the institution is not in compliance with state standards, the council may initiate a special review of the California operations of the institution.

(B) Each institution shall submit a single application for all operations in California, and the application shall include a single fee which is institution based and not site based.

(C) The council shall develop a procedural rationale to justify the number of sites to be visited by the state in the review of the institution's operations in California.

(D) The purpose of the onsite review by the council shall be to determine that operations by the institution in California meet the minimum state standards identified in statute.

(E) The standards and procedures shall not unreasonably hinder educational innovation and competition.

(5) The regulations adopted by the council to implement this chapter shall provide for consideration of the accredited institutions' stated educational goals, purposes, and objectives, in conducting the approval review of the California operations of out-of-state based institutions.

(A) These regulations shall include a formula to determine the

institutional approval fee and the number of sites to be visited by the state.

(B) The regulations adopted by the council shall be based on the procedures and standards recommended by the special committee and acted upon by the commission. In conducting the approval review of the operation of out-of-state accredited institutions in California, the council shall interpret the regulations based upon each institution's accredited educational purposes and objectives.

(6) All institutions operating under subdivision (b) of Section 94310.1, as it read on December 31, 1990, shall receive approval for a period not to exceed five years from the date of the institution's last review by the state. On a date to be specified by the council on or before January 1, 1996, each institution granted approval under this subdivision shall file a completed application for reapproval under this section.

(k) An institution shall not offer any educational program or degree title that was not offered by the institution at the time the institution applied for approval to operate, and shall not offer any educational program or degree title at a campus that had not offered the program or degree title at the time the institution applied for approval to operate that campus, unless the council first approves the offering of the program or degree title after determining that it satisfies the minimum standards established by this section.

SEC. 7. Section 94311 of the Education Code is amended to read:

94311. No private postsecondary educational institution, except those offering degrees and approved under Section 94310, may offer education services or an education program, unless the institution or the branch or satellite campus at which these programs are offered, has been approved by the council as meeting the requirements of this section and, if regulated by an agency within the Department of Consumer Affairs, has obtained and retained the approval of that agency:

(a) If an institution is operating under the council's prior approval and the institution has applied for approval to operate for itself or a branch or satellite campus that is operating, the council shall not grant approval to operate until it has conducted a qualitative review and assessment of the operations of the institution in California, and determined that all of the following minimum standards have been satisfied:

(1) The quality and content of each course or program of instruction, training, or study may reasonably and adequately be expected to achieve the objective for which the course or program is offered. All courses offered by the institution shall meet the minimum standards prescribed by this subdivision. If an institution represents that a course or program leads to employment, the quality, content, and instruction of the course or program shall be sufficient to assure that students may acquire the necessary level of education, training, skill, and experience to obtain employment in the occupation or job title to which the course or program of

instruction is represented to lead.

(2) There is in the institution adequate space, equipment, instructional material, and instructor personnel to provide training of the quality needed to attain the objective described in paragraph (1).

(3) Every instructor and administrator possess adequate academic, experiential, and professional qualifications to teach the course or to perform the duties that the person is assigned and satisfies all standards established by the council by regulation, and holds an applicable and valid certificate of authorization for service issued by the council in the specified competence area in which the individual will serve. No person shall serve as an instructor or member of the administrative staff if that person has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of federal or state funds, or who has been judicially or administratively determined to have committed any violation of this chapter or of any law involving state or federal funds.

(4) The institution maintains for at least five years written records of the student's previous education and training, where applicable.

(5) A copy of the course outline, description of the occupations or job titles, if any, to which the course of instruction is represented to lead, schedule of tuition, fees and other charges, refund policy, regulations pertaining to tardiness, absence, grading policy and rules of operation and conduct is given to students prior to enrollment.

(6) The institution maintains and enforces adequate standards relating to, and maintains records of, attendance, satisfactory academic progress, and student performance to achieve the objective described in paragraph (1).

(7) The institution complies with all local city, county, municipal, state, and federal regulations relative to the safety and health of all persons upon the premises such as fire, building, and sanitation codes. The council may require evidence of compliance.

(8) The institution does not exceed enrollment which the facilities and equipment of the institution can reasonably handle.

(9) The institution's officers, directors, and owners demonstrate financial and fiduciary responsibility, as prescribed by statute, or by regulations adopted by the council.

(10) The institution is in compliance with this chapter and has developed policies and procedures designed to ensure that compliance.

(11) No circumstances exist which are grounds for the revocation or suspension of an approval to operate.

(12) The institution complies with Article 2.5 (commencing with Section 94316) if that article is applicable.

(13) Application for approval shall be made in writing on forms prescribed by the council, which shall include, if applicable to the institution, a statement of whether the institution claims that it is exempt or that a course or other educational service it offers is

exempt from Article 2.5 (commencing with Section 94316), and the information required by subdivision (f) of Section 94319.2.

(b) Within 90 days following the receipt of an application from an institution that is operating under the superintendent's prior authorization or approval or the council's prior approval, and prior to granting any approval, a representative of the council shall personally inspect the institution and verify the institution's compliance with the standards prescribed by this chapter. The onsite inspection shall include an inspection of the institution's facilities and records, interviews of administrators, faculty, and students, and an observation of class instruction, as determined to be appropriate by the council. If the application is for approval to operate a branch or satellite campus that is in operation, the council shall inspect that branch or satellite campus as provided herein and also may inspect the institution operating the branch or satellite campus. The council may waive or modify the onsite inspection for an institution located outside of California or for an institution offering home study or correspondence courses. For the purposes of this section, "council's prior approval" includes the prior approval or authorization of the Superintendent of Public Instruction, if applicable.

(c) Within 90 days following the inspection described in subdivision (b) or any reasonable extension of time not to exceed 90 days, the council shall reach a decision on the merits and shall do one of the following:

(1) If the institution is in compliance with this chapter and has not operated within three years before the filing of the application in violation of this chapter then in effect, the council may grant approval for a period not to exceed three years.

(2) If the institution is in compliance with this chapter, but has operated within three years before the filing of the application in violation of this chapter then in effect, or if the council, in its discretion, determines that an unconditional grant of approval to operate is not in the public interest, the council may grant a conditional approval to operate subject to whatever restrictions the council deems appropriate. The council shall notify the institution of the restrictions, the bases for the restrictions, and the right to request a hearing to contest the restrictions.

(3) The council may deny the application if the institution does not comply with this chapter, including the minimum standards established in subdivision (a), or has operated within three years before the filing of the application in violation of this chapter then in effect. If the application is denied, the council, in its discretion, may permit the institution to continue offering the course or courses of instruction to students already enrolled or may order the institution to cease all instruction and provide a refund of tuition and all other charges to students. The council shall notify the institution of the denial, the bases for the denial, and the right of the institution to request a hearing to contest the denial.

(d) (1) If an institution is not operating in California when it

applies for approval to operate for itself or a branch or satellite campus, the institution shall file with its application an operational plan establishing that the institution will satisfy the minimum standards set forth in subdivision (a). The operational plan also shall include a detailed description of the institution's program for implementing the operational plan, including proposed procedures, financial resources, and the qualifications of owners, directors, officers, and administrators employed at the time of the application's filing. The council may request additional information to enable the council to determine whether the operational plan and its proposed implementation will satisfy these minimum standards.

(2) If the council determines that the operational plan satisfies the minimum standards described in subdivision (a), that the institution demonstrates that it will implement the plan, and that no ground for denial of the application exists, the council shall grant a temporary approval to operate, subject to any restrictions the council reasonably deems necessary to assure compliance with this chapter, pending a qualitative review and assessment as provided in subdivisions (a) and (b). The council shall inspect the institution, or branch or satellite campus if approval is sought for that campus, between 90 days and 180 days after operation has begun under the temporary approval to operate. Within 90 days following the council's inspection of the institution, the council shall act as provided in subdivision (c).

(e) If an institution that is operating in California applies for approval to operate a branch or satellite campus that has not operated in this state, the institution shall file an operational plan for the branch or satellite campus as described in subdivision (d). The council shall evaluate the branch or satellite campus as provided in subdivision (d). The council also may evaluate the institution as provided in subdivisions (a) and (b) before determining whether to grant to the institution temporary or final approval to operate the branch or satellite campus. If the institution or the branch or satellite campus does not meet the requirements of this chapter or if the institution has operated within three years before the filing of the application in violation of this chapter then in effect, the council may deny the application for approval to operate the branch or satellite campus or may grant a conditional approval to operate the branch or satellite campus subject to whatever restrictions the superintendent deems appropriate. The provisions for notice and hearing described in paragraphs (2) and (3) of subdivision (c) shall apply.

(f) No institution shall offer a course or program of instruction, training, or study at a campus that had not offered the course or program at the time the institution applied for approval to operate that campus unless the council first approves the offering of the course or program after determining that it satisfies the minimum standards established in subdivision (a).

(g) All institutions operating in California on December 31, 1989,

pursuant to the prior authority of subdivision (c) of former Section 94311, and which continued to operate under the requirements of this chapter on the operative date of this section, shall receive an approval status for a period not to exceed three years. On a specified date to be determined by the council on or before June 30, 1993, each institution granted an approval pursuant to this subdivision shall file a completed application for reapproval pursuant to this section.

All institutions operating in California on December 31, 1990, pursuant to prior authority of subdivision (a) or (b) of former Section 94311, shall receive approval from the council for a period not to exceed three years. On or before June 30, 1994, the council shall work in cooperation with the appropriate state boards or agencies, to review each of these institutions to determine whether the institution is in compliance with the requirements of this chapter. It is the intent of the Legislature that the council develop a memorandum of understanding with each of the appropriate state boards or agencies to delineate the responsibilities of each agency for the approval and monitoring of these private vocational institutions that were operating on December 31, 1990, under the prior authority of subdivisions (a) and (b) of former Section 94311. It is further the intent of the Legislature that these memorandums of understanding be introduced as legislation on or before February 1, 1994, for enactment as amendments to this act.

All institutions operating in California on December 31, 1990, pursuant to the prior authority of subdivision (d) of former Section 94311, shall receive an approval for a period not to exceed three years. On a specified date to be determined by the council on or before December 31, 1993, each institution granted an approval pursuant to this subdivision, shall file a completed application for reapproval pursuant to this section.

(h) The council may enter into an agreement for the regulation and oversight of nondegree-granting private postsecondary institutions with the Federal Aviation Administration or with the state agency responsible for administering Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code.

The council may enter into a regulatory agreement only when the appropriate agency can demonstrate that its standards and procedures for the review of institutions encompass the standards and consumer protection requirements prescribed by this chapter and that these standards and procedures are rigorously enforced.

Nothing in this section shall modify the existing authority of regulatory agencies within the Department of Consumer Affairs relating to schools or programs.

(i) If at any time the council determines that an institution has deviated from the standards for approval, the council, after giving the institution due notice and an opportunity to be heard, may place the institution on probation for a specified period of time not to exceed 24 calendar months. During the period of probation, the

institution shall be subject to special monitoring. The conditions for probation may include the required submission of periodic reports, as prescribed by the council, and special visits by authorized representatives of the council to determine progress toward total compliance. If at the end of the specified probationary period the institution has not taken steps to eliminate the causes for its probation to the satisfaction of the council, the council may revoke the institution's approval and provide notice to the institution to cease its operations.

SEC. 8. Section 94311.1 of the Education Code is amended to read:

94311.1. (a) Each individual submitting an application for a certificate of authorization for service, pursuant to paragraph (3) of subdivision (a) of Section 94311, shall provide the council with the following information:

(1) A completed application as supplied by the council.

(2) Certified copies of educational transcripts, where applicable.

(3) Verified employment history.

(4) Other documentation of prior experience or education as may be required for verification.

(b) To be eligible for a certificate of authorization for service, the applicant shall fulfill the applicable requirements as follows:

(1) Instructors shall have all of the following qualifications:

(A) No record of any violations of this chapter.

(B) Verification that he or she possesses a combination of at least three years' experience and training or education in the occupation or job title category for which certification is sought.

(C) An instructor for a program which leads to a degree shall possess a degree of equal or higher level in the occupation for which certification is sought.

(2) Directors shall have both of the following qualifications:

(A) Five years' experience in an administrative position in a public or an approved private postsecondary school.

(B) No record of any violations of this chapter.

(3) Associate directors shall have both of the following qualifications:

(A) Two years' experience in an administrative or other responsible position in a public or state approved private postsecondary school.

(B) No record of any violations of this chapter.

(4) Financial aid directors shall have all of the following qualifications:

(A) Five years' experience in an administrative position in the financial aid office of a public or approved private postsecondary school.

(B) Verification of completion within the previous two years of a training seminar or workshop certified by the California Student Aid Commission as providing up-to-date comprehensive information on financial aid programs and policies.

(C) No record of any violations of this chapter.

(D) Any other requirements the council deems necessary.

(5) Financial aid officers shall possess all of the following qualifications:

(A) Verification of completion within the previous two years of a training seminar or workshop certified by the California Student Aid Commission as providing up-to-date comprehensive information on financial aid programs and policies.

(B) No record of any violations of this chapter.

(C) Other requirements the council deems necessary.

(c) Each individual certified for authorization for service in the positions listed in paragraphs (1), (4), and (5) of subdivision (b) shall maintain at each private postsecondary educational institution where he or she is employed a validated transcript evidencing the successful completion of three continuing education units of recognized in-service training in their education, job title category, or employment field during every period of certification. These units may be completed through in-service training offered by accrediting associations, professional organizations, or council-approved programs.

(d) Every certificate of authorization issued to a person who possesses the qualifications described in paragraphs (1), (4), and (5) of subdivision (b) shall be valid for a period of three years.

(e) In addition to the requirements set forth in this section, the council may impose additional requirements by regulation.

SEC. 9. Section 94311.4 of the Education Code is amended to read:

94311.4. (a) The review of a private postsecondary educational institution's original application for approval, or a renewal application to the council, or an approved institution already in operation, shall include a determination of the institution's financial responsibility. An institution shall be considered financially responsible if it has sufficient assets for all of the following:

(1) To provide the educational services stated in its official publications and statements.

(2) To comply with the standards and requirements specified in Sections 94310 and 94311.

(3) To provide the administrative and financial resources to fully comply with Section 94312.

(b) An institution shall not be considered financially responsible under any of the following conditions:

(1) The institution, under generally accepted accounting principles, has had operating losses in, at a minimum, the two most recent years.

(2) Under generally accepted accounting principles, the institution had, at the end of its latest fiscal year, a ratio of current assets to current liabilities of less than 1.25 to 1.

(3) Under a fund accounting system, the institution's unrestricted current or operating fund reflects sustained material deficits over at

least its two most recent fiscal years.

(4) The institution is not in compliance either with the regulations adopted by the council or with any existing statutes relating to the requirements for maintaining sufficient funds to cover all operating expenses.

(c) If the council determines that an institution is not financially responsible, the council, under terms and conditions prescribed by the council, may require the institution to submit for its latest complete fiscal year and its current fiscal year, each of the following:

(1) A financial audit of the institution conducted by a licensed certified public accountant, in accordance with generally accepted auditing standards.

(2) The institution's financial plan for establishing financial responsibility.

(3) Any other information requested by the council.

This subdivision shall not prevent the council from taking any other actions authorized under this chapter.

(d) This section shall not apply to institutions subject to Section 94316.6.

SEC. 10. Section 94311.8 is added to the Education Code, to read:

94311.8. (a) All institutions that were certified to offer flight instruction by the Federal Aviation Administration (FAA) and that operated in California on December 31, 1990, pursuant to prior authority of subdivision (a) or (b) of former Section 94311, shall receive approval from the council for a period not to exceed three years. On or before June 30, 1995, the council shall work in cooperation with the FAA to review each of these institutions to determine whether the institution is in compliance with the requirements of this chapter. It is the intent of the Legislature that the council develop a memorandum of understanding with the FAA to delineate the responsibilities of each agency for the approval and monitoring of these private vocational institutions that were operating on December 31, 1990, under the prior authority of subdivision (a) or (b) of former Section 94311. It is further the intent of the Legislature that this memorandum of understanding be introduced as legislation on or before February 1, 1995, for enactment as amendments to this act. It is the intent of the Legislature that all institutions whose cumulative gross student loan default rate is above 40 percent, as determined by the Student Aid Commission, shall be reviewed by the FAA and the council to determine if these institutions are in compliance with the requirements of this chapter and should continue to be approved to offer educational programs in California.

(b) Institutions certified to offer flight instruction by the FAA, or its successor agency, shall comply with all of the requirements of Section 94312 or Article 2.5 (commencing with Section 94316), whichever is applicable, but shall not be required to file any materials with the council that are not required by the FAA or its successor agency, except those minimally necessary to administer

the Student Tuition Recovery Fund, pursuant to Section 94342, as determined by the council. The responsibility for monitoring and enforcing institutional compliance for these institutions shall be with the council.

(c) This chapter shall not apply to individual flight instructors not requiring any advance payments, who do not negotiate a formal contract of indebtedness, and who do not have an established place of business other than their residences.

SEC. 11. Section 94312 of the Education Code is amended to read:

94312. All institutions approved under this chapter shall be maintained and operated, or in the case of a new institution, shall demonstrate that it will be maintained and operated, in compliance with all of the following minimum standards:

(a) That the institution is financially capable of fulfilling its commitments to its students.

(b) That the institution and its agents do not utilize advertising of any type that is false or misleading, either by actual statement, omission, or intimation.

(c) That the institution designates an agent for service of process within this state.

(d) That the institution has and maintains the following specified policy for the refund of the unused portion of tuition fees and other charges in the event the student does not register for the period of attendance or withdraws therefrom at any time prior to completion of the courses, or otherwise fails to complete the period of enrollment. The institutional refund policy for students who have completed 60 percent or less of the course of instruction shall be a pro rata refund. Except as provided in paragraph (1), the refund shall be the amount the student paid for the instruction multiplied by a fraction, the numerator of which is the number of hours of instruction or the number of lessons in a home study or correspondence course which the student has not received but for which the student has paid, and the denominator of which is the total number of hours of instruction or the number of lessons in a home study or correspondence course for which the student has paid.

(1) The institution, for all students, without penalty or obligation, shall refund 100 percent of the amount paid for institutional charges, less a reasonable deposit or application fee not to exceed one hundred dollars ($100), if notice of cancellation is made prior to or on the first day of instruction. If the first lesson in a home study or correspondence course is sent to the student by mail, the institution shall send it by first-class mail, postage prepaid, documented by a certificate of mailing, and the student shall have the right to cancel until midnight of the eighth business day after the first lesson was mailed. The institution shall advise each student that any notification of withdrawal or cancellation and any requests for a refund must be made in writing.

(2) The institution shall provide a written statement containing its refund policy, together with examples of the application of the

policy, to each student prior to signing the enrollment contract, and shall make its policy known to currently enrolled students.

(3) Institutions shall pay or credit refunds due on a reasonable or timely basis, not to exceed 30 days following the date upon which the student's withdrawal has been determined.

(4) Each institution shall publish a current schedule of all student charges, a statement of the purpose for those charges, and a statement of the cancellation and refund policies with examples of the application of the policies, and shall provide the schedule to all current and prospective students prior to enrollment. The schedule shall clearly indicate and differentiate all mandatory and optional student charges. The institution shall include a clear statement written in English describing the procedures that a student must follow to cancel the contract or agreement and obtain a refund. If the institution solicited the student or negotiated the agreement in a language other than English, the notice to the student shall be in that same language. The schedule shall specify the total costs of attendance which shall include, but not be limited to, tuition, fees, equipment costs, housing, transportation, books, necessary supplies, materials, shop and studio fees, and any other fees and expenses that the student will incur upon enrollment.

The schedule shall clearly identify all charges and deposits that are nonrefundable.

(5) The council shall determine the details of the other refund policy through regulations and shall take into consideration the contract for educational services entered into with the student, as well as the length and character of the educational program in determining standards for refunds. The decision of the council shall be final.

(e) That any written contract or agreement signed by a prospective student will not become operative until the student makes an initial visit to the institution or attends the first class or session of instruction. The school officials are obligated to provide the student with a thorough tour of the campus facilities and to place a written statement, signed by the student, in the student's file to verify that the visitation and campus tour were provided. This provision does not apply to correspondence schools or other distance learning programs.

(f) That any written contract or agreement for educational services with an institution shall include each of the following:

(1) On the first page of the agreement or contract, in 12-point boldface print or larger, the following statement:

"Any questions or problems concerning this school which have not been satisfactorily answered or resolved by the school should be directed to the Council for Private Postsecondary Education, Sacramento, California 95814."

(2) In underlined capital letters on the same page of the contract or agreement in which the student's signature is required, the total amount that the student is obligated to pay for the course of

instruction and all other services and facilities furnished or made available to the student by the school, including any charges made by the school for tuition, room and board, books, materials, supplies, shop and studio fees, and any other fees and expenses that the student will incur upon enrollment.

(3) A list of any charges and deposits that are nonrefundable clearly identified as "nonrefundable" charges.

(4) A written statement signed by a representative of the institution, which certifies that the institution has met all disclosure requirements required by this section and, for institutions participating in state or federal student assistance programs, has met all requirements for the administration of any state financial aid program under Chapter 2 (commencing with Section 69500) of Part 42 or any federal student assistance program under Title IV of the federal Higher Education Act of 1965 (P.L. 89-329), extensions of that act, amendments to that act, and the rules and regulations adopted under that act.

(5) The name and address of the school and the addresses where instruction will be provided.

(6) The name and description of the course of instruction, including the total number of classes, hours, or lessons required to complete the course of instruction.

(7) A clear and conspicuous statement that the agreement or contract is a legally binding instrument when signed by the student and accepted by the school.

(8) A clear and conspicuous caption, "BUYER'S RIGHT TO CANCEL" under which it is explained that the student has the right to cancel the enrollment agreement and obtain a refund, the form and means of notice that the student should use in the event that he or she elects to cancel the enrollment agreement, and the title and address of the school official to whom the notice should be sent or delivered.

(9) A clear statement of the refund policy written in plain English.

(10) The signature of the student under the following statement that is presented in 12-point boldface or larger print: "My signature below certifies that I have read, understood, and agreed to my rights and responsibilities, and that the institution's cancellation and refund policies have been clearly explained to me."

The council, in consultation with its appropriate advisory committee, shall adopt a model contract form that shall be used by each institution. However, if, in the opinion of the council, a contract already in use at a particular institution fulfills all the requirements of this act, the council may approve the contract used by that institution in lieu of the model form.

All contracts and enrollment agreements signed by the student shall be written in language that is capable of being easily understood. If English is not the primary language spoken by the student, the student shall have the right to obtain a clear explanation of the terms and conditions of the agreement and all cancellation and

refund policies in his or her primary language.

(g) That neither the institution nor its agents engage in sales, collection, credit, or other practices of any type that are false, deceptive, misleading, or unfair.

(h) That the institution provides to students and other interested persons, prior to enrollment, a catalog or brochure containing at a minimum the following information:

(1) Descriptions of the instruction provided under each course offered by the institution.

(2) The number of credit hours or clock hours of instruction or training per unit or units required for completion of the educational degree or certificate program.

(3) The attendance, dropout, and leave-of-absence policies.

(4) The faculty and their qualifications.

(5) The schedule of tuition, fees, and all other charges and expenses necessary for the term of instruction and the completion of the course of study.

(6) The cancellation and refund policies.

(7) For institutions which participate in federal and state financial aid programs, all consumer information which the institution is required to disclose to the student.

(8) All other material facts concerning the institution and the program or course of instruction that are reasonably likely to affect the decision of the student to enroll, as prescribed by rules and regulations adopted by the council.

(9) No written contract signed by the student shall be enforceable unless the information specified in this subdivision has been disclosed to the student.

(i) That each institution offering a degree or diploma program designed to prepare students for a particular vocational, trade, or career field shall provide to each prospective student a school performance fact sheet disclosing the following information:

(1) The number and percentage of students who begin the institution's program and successfully complete the entire program. The rate shall be calculated by determining the percentage of students enrolled in the program who were originally scheduled, at the time of enrollment, to complete the program in that calendar year and who successfully completed the program.

(2) The passage rates of graduates in the program for the most recent calendar year that ended not less than six months prior to the date of disclosure on any licensure or certificate examination required by the state for employment in the particular vocational, trade, or career field.

(3) The number and percentage of students who begin the program and secure employment in the field for which they were trained. In calculating this rate, the institution shall consider as not having obtained employment, any graduate for whom the institution does not possess evidence, documented in his or her file, showing that he or she has obtained employment in the occupation for which

the program is offered.

(4) The average annual starting wages or salary of graduates of the institution's program, if the institution makes a claim to prospective students regarding the starting salaries of its graduates, or the starting salaries or local availability of jobs in a field. The institution shall disclose to the prospective student the objective sources of information necessary to substantiate the truthfulness of the claim.

Each school that offers or advertises placement assistance for any course of instruction shall file with the council its placement statistics for the 12-month period or calendar year immediately preceding the date of the school's application for annual review for every course of instruction.

The council shall develop standards and criteria to be used by each institution in determining the statistical information required by this subdivision.

(j) That upon satisfactory completion of training, the student is given an appropriate degree or diploma by the institution, indicating that the course or courses of instruction or study have been satisfactorily completed by the student.

(k) In addition to withholding services as described in Section 94344, an institution may withhold a student's transcript or grades if the student is in default on a student tuition contract.

If the student has made partial payment of his or her tuition obligation, the institution may only withhold that portion of the grades or transcript that corresponds on a pro rata basis to the amount of tuition or loan obligation the student has not paid. If the course of study consists of only one course, the institution may withhold the grades or the transcript until the tuition or loan obligation is paid in full.

(*l*) That adequate and accurate records are maintained by the institution, in accordance with regulations adopted by the council, and that satisfactory standards are enforced relating to attendance, progress, and performance.

(m) That the institution maintains current records for a period of not less than five years at its principal place of business within the State of California, immediately available during normal business hours, for inspection by the council or the Attorney General of California showing all of the following:

(1) The names and addresses, both local and home, including city and state, of each of its students.

(2) The courses of study offered by the institution.

(3) The names and addresses, including city and street, of its faculty, together with a record of the educational qualifications of each.

(4) The degrees or diplomas and honorary degrees and diplomas granted, the date of granting, together with the curricula upon which the diplomas and degrees were based.

(n) That the institution provides instruction as part of its

educational program. Instruction shall include any specific, formal arrangement by an institution for its enrollees to participate in learning experiences wherein the institution's faculty or contracted instructors present a planned curriculum appropriate to the enrollee's educational program.

(o) The council shall take into consideration the character of the educational program in determining whether specific types of institutions may be excluded from application of subdivision (i).

SEC. 12. Section 94312.2 of the Education Code is amended to read:

94312.2. Each institution approved to operate under this chapter shall be required to report to the council, by July 1 of each year, or another date designated by the council, the following information for educational programs offered in the prior calendar year:

(a) The total number of students enrolled, by level of degree or type of diploma program, and by gender, ethnicity, and race.

(b) The number of degrees and diplomas awarded, by level of degree, and by gender, ethnicity, and race.

(c) The degree levels offered.

(d) Program completion rates.

(e) Placement data for vocational training programs, unless that data already is required to be provided by the institution under other requirements of this chapter.

(f) The schedule of tuition and fees required for each term, program, course of instruction, or degree offered.

(g) If an institution submits an audited financial statement to the United States Department of Education, the institution shall submit a copy of that financial statement to the council.

(h) Financial information demonstrating compliance with subdivisions (b) and (c) of Section 94316.6.

(i) Institutions having a probationary or conditional status shall submit an annual report reviewing their progress in meeting the standards required for approval status.

(j) Any additional information that the council may prescribe.

(k) Colleges and universities operating under paragraph (5) of subdivision (w) of Section 94302 shall comply with the reporting requirements of subdivisions (a), (b), (c), and (f) of this section.

Program completion rates and placement data shall be reported in accordance with the standards and criteria prescribed by the council pursuant to subdivision (i) of Section 94312 or Section 94316.10, whichever is applicable. Based on the review of information submitted to fulfill the requirements of this section, the council may initiate a compliance review and may place the institution on probation pursuant to subdivision (e) of Section 94310 and subdivision (i) of Section 94311, and may require evidence of financial stability and responsibility pursuant to Section 94311.5 or 94316.6.

This section shall not apply to institutions or programs subject to the requirements of Article 2.5 (commencing with Section 94316).

SEC. 13. Section 94319.7 of the Education Code is repealed.

SEC. 14. Section 94330 of the Education Code is amended to read:

94330. (a) Each institution desiring to operate in this state shall make application to the council, upon forms to be provided by the council. The application shall include, as a minimum, at least all of the following:

(1) A catalog published, or proposed to be published, by the institution containing the information specified in the criteria adopted by the council. The catalog shall include specific dates as to when the catalog applies.

(2) A description of the institution's placement assistance, if any.

(3) Copies of media advertising and promotional literature.

(4) Copies of all student enrollment agreement or contract forms and instruments evidencing indebtedness.

(5) Copies of participation agreements for state and federal financial aid programs.

(6) The name and California address of a designated agent upon whom any process, notice, or demand may be served.

(7) The information specified in Section 94312.2.

(8) The institution's most current profit and loss statement and current balance sheet, or an audit prepared by a licensed certified public accountant in accordance with generally accepted auditing standards.

(b) Each application shall be signed and certified under oath by the owners of the school or, if the school is incorporated, by the principal owners of the school (those who own at least 10 percent of the stock), or by the governing body of a nonprofit school.

(c) Following review of the application and any other further information submitted by the applicant, or required in conformity with Sections 94310 and 94311, and any investigation of the applicant as the council may deem necessary or appropriate, the council either, shall grant or deny approval to operate to the applicant.

(d) The council shall review and investigate all institutions and courses of instruction approved under this chapter. Consideration in the scheduling of reviews and investigations shall be afforded to student complaints and information collected by the Attorney General, the Student Aid Commission, any board within the Department of Consumer Affairs, or any other federal, state, or local agency.

(e) The approval to operate shall be issued to the owner or the governing body of the applicant institution, and shall be nontransferable. Any person that makes a proper application and complies with this chapter and each standard, rule, and regulation pertaining to this chapter shall be qualified to receive an approval to operate or an approval of the transfer of ownership.

(f) In the event that a shift in control or change of ownership of an institution occurs, an application for a new approval to operate for the institution under the changed ownership or control shall be filed with the council at least 20 days prior to the shift in control or change

in ownership. Whenever an institution is operated at different locations, an application for approval shall be filed for each location.

(g) No application for ownership or transfer of ownership shall be approved for any applicant that has been found previously in any judicial or administrative proceeding to have violated this chapter, or if there exists any of the grounds for denial set forth in Section 480 of the Business and Professions Code.

(h) No change in ownership of the institution shall be made until the application is approved. If an application for a new approval to operate is not timely filed as required by this section, the institution's approval to operate shall terminate. Upon approval of a change in ownership, the council shall give written notice to the Student Aid Commission.

(i) For purposes of this section, a change in ownership occurs when there is a change of control of the institution, or where a person that previously did not own at least 25 percent of the stock or controlling interest of an institution or its parent corporation, acquires ownership of at least 25 percent of the stock of the institution or its parent corporation.

(j) At least 60 days prior to the expiration of an approval to operate, the institution shall complete and file with the council an application form for renewal of its approval to operate. The renewal application shall be reviewed and acted upon as provided in this section.

(k) The council may refuse to issue or renew any private postsecondary or vocational educational institution's approval to operate, or may revoke any approval to operate for any one, or any combination, of the following causes:

(1) A violation of this chapter, or any standard, rule, or regulation established under this chapter.

(2) Furnishing false, misleading, or incomplete information to the council, or the failure to furnish information requested by the council or required by this chapter.

(3) A finding that an owner, a person in control, a director, or an officer of an institution is not in compliance with Section 94311.5, 94316.6, or 94316.8, whichever is applicable.

(4) A finding that a signatory to an application for an approval to operate was responsible for the closure of any institution in which there were unpaid liabilities to the state or federal government, or uncompensated pecuniary losses suffered by students without restitution.

(5) The failure of the institution to maintain the minimum educational standards prescribed by this chapter, or to maintain standards that are the same as, or substantially equivalent to, those represented in the school's applications and advertising.

(6) Presenting to prospective students information that is false or misleading relating to the school, to employment opportunities, or to enrollment opportunities in institutions of higher learning after entering into or completing courses offered by the school.

(7) The failure to maintain financial resources adequate for the satisfactory conduct of the courses of instruction offered as required by statute.

(8) The failure to provide timely and correct refunds to students.

(9) Paying a commission or valuable consideration to any persons for acts or services in violation of this chapter.

(10) Attempting to confer a degree, diploma, or certificate to any student in violation of this chapter.

(11) Misrepresenting to any students or prospective students that they are qualified, upon completion of any course, for admission to professional examination under any state occupational licensing provision.

(12) The failure to correct any deficiency or act of noncompliance under this chapter, or the standards, rules, regulations, and orders established and adopted under this chapter within reasonable time limits set by the council.

(13) The conducting of business or instructional services at any location not approved by the council.

(14) Failure on the part of an institution to comply with provisions of law or regulations governing sanitary conditions of that institution specified in Division 2 (commencing with Section 500) and Division 3 (commencing with Section 5000) of the Business and Professions Code.

If there is reasonable cause to believe that there has been a violation by a private postsecondary or vocational educational institution of the standards prescribed by this chapter, the council shall conduct an investigation of the institution.

(15) The applicant, owner, or persons in control have been found previously in any judicial or administrative procedure to have violated this chapter or admitted to having violated this chapter.

(*l*) Proceedings in connection with the denial of an application to operate or the revocation of an approval to operate shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the council shall have all of the powers granted in that chapter. Any action by the council to place an institution on probation shall be subject to appeal to the full council, and the council shall establish procedures that provide the institution with adequate notice and an opportunity to be heard and to present evidence as to why the action recommended by staff or by a visiting committee shall not be taken.

(m) Upon taking any action to suspend or revoke an institution's approval to operate, the council shall provide written notice to the Student Aid Commission and to any appropriate accrediting association.

(n) A college or university operating under paragraph (5) of subdivision (w) of Section 94302 shall file annually with the council evidence to demonstrate its status as a nonprofit religious corporation under the Corporations Code.

SEC. 15. Section 11011.21 of the Government Code, as added by

Chapter 150 of the Statutes of 1994, is amended to read:

11011.21. In addition to surplus property otherwise identified pursuant to this article, the Department of General Services, prior to January 1, 1995, shall identify state-owned real property that is or will be unused or underutilized by the landholding agency both at present and in the foreseeable future. Properties identified through this process shall be compiled into a list that shall be known as Surplus Property Inventory. Properties identified in the Surplus Property Inventory shall be available for sale, lease, or exchange to state agencies, local government entities, and the public.

Commencing with the 1995–96 fiscal year, the Department of General Services shall sell, lease, or exchange annually, at fair market value, not less than 10 percent of the real property on the Surplus Property Inventory, the proceeds from the sale of which is required to be deposited into the General Fund. The Department of General Services shall prepare a plan for, and submit a report to, the Legislature regarding, the sale of these properties by January 1, 1995.

State agencies, when purchasing real property, shall review the state Surplus Property Inventory and purchase, lease, or trade property on that list if possible, prior to purchasing property not on the Surplus Property Inventory.

The Department of General Services shall compile information regarding activity with regard to property listed on the Surplus Property Inventory related to the disposition of that real property and shall report to the Legislature annually by January 1 of each year.

This section shall not apply to property under the control or ownership of the Trustees of the California State University.

SEC. 15.5. Section 11126 of the Government Code, as amended by Chapter 26 of the Statutes of 1994, is amended to read:

11126. (a) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing. As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void. The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body. Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

For the purposes of this section, "employee" shall not include any person who is elected to, or appointed to a public office by, any state

body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees.

(b) Nothing in this article shall be construed to prevent state bodies which administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(c) Nothing in this article shall be construed to prevent an advisory body of a state body which administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters which the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(d) Nothing in this article shall be construed to prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 or similar provisions of law.

(e) Nothing in this article shall be construed to prevent any state body from holding a closed session to consider matters affecting the national security.

(f) Nothing in this article shall be construed to grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(g) Nothing in this article shall be construed to prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests which the donor or proposed donor has requested in writing to be kept confidential.

(h) Nothing in this article shall be construed to prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(i) Nothing in this article shall be construed to prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and

terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties which the negotiations may concern and the person or persons with whom its negotiator may negotiate.

For purposes of this subdivision, the negotiator may be a member of the state body.

For purposes of this subdivision, "lease" includes renewal or renegotiation of a lease.

Nothing in this subdivision shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (q).

(j) (1) Nothing in this article shall be construed to prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(2) Nothing in this article shall be construed to prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(3) Nothing in this article shall be construed to prevent the Student Aid Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the Student Aid Commission.

(k) Nothing in this article shall be construed to prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or data the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the executive officer of the Franchise Tax Board.

(*l*) Nothing in this article shall be construed to prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(m) Nothing in this article shall be construed to prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(n) Nothing in this article shall be construed to prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this subdivision, a state

body shall also be exempt from the provision of subdivision (i) relating to the identification of real properties prior to the closed session.

(o) Nothing in this article shall be construed to prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(p) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against regulated utilities.

(q) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(1) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(2) (A) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body; or

(B) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to subparagraph (A).

(3) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1),

the memorandum shall include the title of the litigation. If the closed session is pursuant to paragraph (2) or (3), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(r) Nothing in this article shall be construed to prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(s) Nothing in this article shall be construed to prevent the examining committee established by the State Board of Forestry, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(t) Nothing in this article shall be construed to prevent an administrative committee established by the State Board of Accountancy pursuant to Section 5020 or 5020.3 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(u) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.2, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(v) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.7, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to Section 11121, 11121.2, or 11121.5.

(w) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.8, from conducting a closed session to consider any matter that properly could be considered in a closed

session by the state body it advises.

(x) Nothing in this article shall be construed to prevent the State Board of Equalization from holding closed sessions for either of the following:

(1) When considering matters pertaining to the appointment or removal of the executive secretary of the State Board of Equalization.

(2) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(y) Nothing in this article shall be construed to prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor pursuant to Section 8590 concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(z) This article shall not prevent the Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the chief investment officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(aa) This article shall not prevent the Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

SEC. 15.7. Section 15814.21 of the Government Code is amended to read:

15814.21. (a) In addition to revenues calculated for apportionment to community college districts pursuant to Article 2 (commencing with Section 84750) of Chapter 5 of Part 50 of the Education Code, if a community college capital outlay project has been approved by the Board of Governors of the California Community Colleges, the Chancellor of the California Community Colleges shall apportion state aid equal to the amount necessary for each district to meet its energy service contract obligation determined pursuant to this chapter. It is the intent of the Legislature that these funds be appropriated annually as a part of the state's general apportionment funds for the community colleges.

(b) If a community college district enters into an energy service contract with the State Public Works Board pursuant to this chapter, the district, as a part of that energy service contract, shall authorize the chancellor and Controller to withhold from its annual apportionment the amount of funds necessary to satisfy its annual energy service contract obligation to the State Public Works Board. The agreement shall include authorization to withhold the additional apportionment amount and the amount determined to be the district's proportional share of the energy service contract obligation

as determined pursuant to subdivision (a). The authorization shall have precedence over other expenditure obligations of the district. The chancellor shall certify the amounts, by district, to the Controller. The Controller shall withhold the amount so reported for each district and, acting on behalf of each district, shall transfer the appropriate amount from Section B of the State School Fund to the State Public Works Board for the purpose of payment of the debt service obligation for the bonds sold to finance the projects.

SEC. 16. The Legislature hereby finds and declares that the amendment made to Section 94330 of the Education Code by Section 14 of this act is not a change of, but is declaratory of, the law as it existed immediately prior to the effective date of the Private Postsecondary and Vocational Education Reform Act of 1989.

SEC. 17. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 18. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to effectuate changes in California's public postsecondary institutions at the earliest possible time and particularly in order to limit the scope of a certain surplus property inventory required to be completed by January 1, 1995, it is necessary that this act take effect immediately.

CHAPTER 423

An act to amend Sections 17331.2 and 17414 of, and to add Section 17606.1 to, the Financial Code, relating to escrow agents.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 17331.2 of the Financial Code is amended to read:

17331.2. (a) Fidelity Corporation shall deny the application for a

certificate or revoke the certificate of any person, upon any of the following grounds:

(1) The application contains a material misrepresentation of fact or fails to disclose a material fact so as to render the application false or misleading, or if any fact or condition exists which, if it had existed at the time of the original application for a certificate, reasonably would have warranted Fidelity Corporation to refuse originally to issue such certificate.

(2) That the person has been convicted of, or pleaded nolo contendere to, a crime or offense, whether a felony, an offense punishable as a felony, or a misdemeanor, which involved dishonesty, fraud, deceit, embezzlement, fraudulent conversion, misappropriation of property, or any other crime reasonably related to the qualifications, functions, or duties of a person engaged in business in accordance with this division, which conviction has not been expunged and the person has not obtained a certificate of rehabilitation, as allowed by the Penal Code. If, however, the conviction is more than 10 years old, or if the conviction is for a minor offense or infraction, then the person may have a Fidelity Corporation certificate upon showing by clear and convincing proof to a reasonable certainty that the conviction is no longer reasonably related to the qualifications, functions, or duties of that person's employment with a member.

(3) That the person has been held liable in a civil action by final judgment of any court except small claims courts, if the judgment involved dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property. The person may have a Fidelity Corporation certificate upon showing by clear and convincing proof to a reasonable certainty that the judgment is no longer reasonably related to the qualifications, functions, or duties of that person's employment with a member.

(4) That the person has (A) committed or caused to be committed an act which caused any member to suffer a loss; (B) committed or caused to be committed or colluded with any other person committing any act which caused a loss, for which Fidelity Corporation or the insurer on any insurance policy or fidelity bond purchased by Fidelity Corporation, or both, to become liable to indemnify any member; or (C) committed or caused to be committed an act of dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property, to the material damage of a member or for which the member has been held liable to any third party, by final judgment.

(5) That the person has been barred from employment by final order of the commissioner pursuant to Section 17423.

(6) That the person has been deemed not qualified to serve in any capacity as a director or officer or in any other position involving management duties with a financial institution, pursuant to Division 1.8 (commencing with Section 4990).

(7) That the person has been denied coverage or reinstatement

by any insurer under any fidelity bond or crime policy, unless a decision of reinstatement of coverage has been made after such denial. A person who obtained a decision of reinstatement of coverage prior to the effective date of this section may have a Fidelity Corporation certificate notwithstanding paragraphs (2) and (3) of this subdivision, unless any other ground for denial or revocation applies to that person.

(b) Fidelity Corporation may suspend the certificate of any person upon any of the following grounds:

(1) That the person has been censured or suspended from any position of employment or management or control of any escrow agent, by final order of the commissioner.

(2) That there is an action commenced by the commissioner to either suspend or bar such person, under Section 17423.

(3) That any member with whom the person was employed has given a proof of loss or a notice of an occurrence which may give rise to a claim for a loss of trust obligations either of which identifies the person as the person responsible for the loss or as a person acting in collusion with the person causing the loss.

(c) Upon denial of an application for, or upon suspension or revocation of the certificate of any person, Fidelity Corporation shall provide written notice to the member with whom that person is employed of the decision, pending any appeal therefrom which might be made. Thereafter, the member shall not allow that person to have access to money or negotiable securities belonging to or in the possession of the escrow agent, or to draw checks upon the escrow agent or the trust accounts of the escrow agent. Fidelity Corporation shall notify the person in writing of the decision to deny, suspend, or revoke the certificate and of the person's right of appeal, together with the notice of appeal. The grounds and basis for the decision shall be stated in the notice thereof. All notices may be served either personally or by mail, properly addressed to the address of record for the member and the person.

(d) Any person whose application for a certificate has been denied, or whose certificate has been suspended or revoked, may appeal the decision, as provided in Section 17331.3. While such appeal is pending, the person may not have access to money or negotiable securities belonging to or in the possession of the escrow agent, or to draw checks upon the escrow agent or the trust accounts of the escrow agent. Failure to remove the person whose application has been denied, or whose certificate has been suspended or revoked, as a signer on the trust accounts may be subject to action by the commissioner as provided for in this division and shall be subject to penalties as set forth in Section 17331.1.

(e) Upon expiration of the time for an appeal, or upon conclusion of the appeal, the decision to deny an application for or to suspend or revoke the certificate of any person shall become final. Fidelity Corporation shall give written notice to the member and to the person of the final decision within 10 days. Thereafter, Fidelity

Corporation shall disclose in writing to all members the identity of persons whose application has been denied or whose certificate has been revoked.

SEC. 2. Section 17414 of the Financial Code is amended to read:

17414. (a) It is a violation for any person subject to this division or any director, stockholder, trustee, officer, agent, or employee of any such person to do any of the following:

(1) Knowingly or recklessly disburse or cause the disbursal of escrow funds otherwise than in accordance with escrow instructions, or knowingly or recklessly to direct, participate in, or aid or abet in a material way, any activity which constitutes theft or fraud in connection with any escrow transaction.

(2) Knowingly or recklessly make or cause to be made any misstatement or omission to state a material fact, orally or in writing, in escrow books, accounts, files, reports, exhibits, statements, or any other document pertaining to an escrow or escrow affairs.

(b) Any director, officer, stockholder, trustee, employee, or agent of an escrow agent, who abstracts or willfully misappropriates money, funds, trust obligations or property deposited with an escrow agent, is guilty of a felony. Upon conviction, of an offense under this section or similar offenses specified in Chapter 4 (commencing with Section 470), Chapter 5 (commencing with Section 484), or Chapter 6 (commencing with Section 503) of Title 13 of Part 1 of the Penal Code, the court shall, in addition to any other punishment imposed, order the person to make full restitution, first to the escrow agent and then to Fidelity Corporation, to the extent it has indemnified the escrow agent. Nothing in this section shall be deemed or construed to repeal, amend, or impair any existing provision of law prescribing a punishment for such an offense.

(c) Any person subject to this division who knows of a person's involvement in an abstraction or misappropriation of money, funds, trust obligations, or property deposited with a licensed escrow agent shall immediately report the abstraction or misappropriation in writing to the commissioner and to Fidelity Corporation. No person shall be civilly liable for reporting as required under this subdivision, unless the information provided in the report is false and the person providing false information does so with knowledge and malice. The reports filed under this section, including the identity of the person making the filing, shall remain confidential pursuant to state law.

SEC. 3. Section 17606.1 is added to the Financial Code, to read:

17606.1. The license of an escrow agent shall be deemed revoked upon the completion or closure of a court approved liquidation of the business of the escrow agent, whether pursuant to Section 17635 or 17636, or otherwise, unless the escrow agent within 10 days of the court's order approving the closing or completion of liquidation secures a court order restraining the revocation from taking effect.

CHAPTER 424

An act to amend Sections 830.8 and 847 of the Penal Code, relating to peace officers.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 830.8 of the Penal Code is amended to read:

830.8. (a) Federal criminal investigators and law enforcement officers are not California peace officers, but may exercise the powers of arrest of a peace officer in any of the following circumstances:

(1) Any circumstances specified in Section 836 or Section 5150 of the Welfare and Institutions Code for violations of state or local laws.

(2) When these investigators and law enforcement officers are engaged in the enforcement of federal criminal laws and exercise the arrest powers only incidental to the performance of these duties.

(3) When requested by a California law enforcement agency to be involved in a joint task force or criminal investigation.

(4) When probable cause exists to believe there is any public offense that involves immediate danger to persons or property.

In all of these instances, the provisions of Section 847 shall apply. These investigators and law enforcement officers, prior to the exercise of these arrest powers, shall have been certified by their agency heads as having satisfied the training requirements of Section 832, or the equivalent thereof.

(b) Duly authorized federal employees who comply with the training requirements set forth in Section 832 are peace officers when they are engaged in enforcing applicable state or local laws on property owned or possessed by the United States government, or on any street, sidewalk, or property adjacent thereto, and with the written consent of the sheriff or the chief of police, respectively, in whose jurisdiction the property is situated.

(c) National park rangers are not California peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the powers of a peace officer specified in Section 5150 of the Welfare and Institutions Code for violations of state or local laws provided these rangers are exercising the arrest powers incidental to the performance of their federal duties or providing or attempting to provide law enforcement services in response to a request initiated by California state park rangers to assist in preserving the peace and protecting state parks and other property for which California state park rangers are responsible. National park rangers, prior to the exercise of these arrest powers, shall have been certified by their agency heads as having satisfactorily completed the training requirements of Section 832.3, or the equivalent thereof.

(d) Notwithstanding any other provision of law, during a state of war emergency or a state of emergency, as defined in Section 8558 of the Government Code, federal criminal investigators and law enforcement officers who are assisting California law enforcement officers in carrying out emergency operations are not deemed California peace officers, but may exercise the powers of arrest of a peace officer as specified in Section 836 and the powers of a peace officer specified in Section 5150 of the Welfare and Institutions Code for violations of state or local laws. In these instances, the provisions of Section 847 and of Section 8655 of the Government Code shall apply.

SEC. 2. Section 847 of the Penal Code is amended to read:

847. A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him or her to a peace officer. There shall be no civil liability on the part of, and no cause of action shall arise against, any peace officer or federal criminal investigator or law enforcement officer described in subdivision (a) or (d) of Section 830.8, acting within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest when any one of the following circumstances exist:

(a) The arrest was lawful or when the peace officer, at the time of the arrest had reasonable cause to believe the arrest was lawful.

(b) When the arrest was made pursuant to a charge made, upon reasonable cause, of the commission of a felony by the person to be arrested.

(c) When the arrest was made pursuant to the requirements of Section 142, 838, or 839.

CHAPTER 425

An act to add Section 40928 to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 40928 is added to the Health and Safety Code, to read:

40928. (a) For purposes of this section, the following terms have the following meaning:

(1) "Event center" means a community center, activity center, auditorium, convention center, stadium, coliseum, arena, sports facility, racetrack, pavilion, amphitheater, theme park, amusement park, fairgrounds, or other building, collection of buildings, or facility which is used exclusively or primarily for the holding of sporting

events, athletic contests, contests of skill, exhibitions, conventions, meetings, spectacles, concerts, or shows, or for providing public amusement or entertainment.

(2) "Average vehicle ridership" means the total number of attendees arriving in vehicles parking in areas controlled by the event center, divided by the total number of those vehicles parking in areas controlled by the event center.

(b) (1) Notwithstanding Section 40717, or any other provision of this chapter, and to the extent consistent with federal law, no district, or regional or local agency to which a district has delegated the authority to implement transportation control measures pursuant to Section 40717, and which is acting pursuant to that delegated authority, shall do either of the following:

(A) Require an event center which achieves an average vehicle ridership greater than 2.20 to implement any transportation control requirements that are intended to achieve reductions in vehicle trips or vehicle miles traveled by event center attendees.

(B) Require an event center which, since 1987, has achieved a 12.5 percent reduction in vehicle trips or vehicle miles traveled, to implement additional transportation control requirements that are also intended to achieve reductions in vehicle trips or vehicle miles traveled by event center attendees.

(2) A district, or regional or local agency, may require event centers which achieve an average vehicle ridership greater than 2.20, or which, since 1987, has achieved a 12.5 percent reduction in vehicle trips or vehicle miles traveled, to implement approved alternative strategies which will achieve emission reductions that are equivalent to those that would be achieved by the imposition of transportation control requirements intended to reduce vehicle trips or vehicle miles traveled by event center attendees, including, but not limited to, those strategies specified in subdivision (c).

(c) A district or regional or local agency may impose requirements on any event center, without permitting that event center to implement alternative strategies to achieve equivalent emissions reductions, for any of the following purposes:

(1) Traffic management before and after events.

(2) Parking management and vehicle flow within parking areas controlled by the event center.

(3) Reducing the amount of vehicle idling before and after events.

(4) Implementing marketing or education programs designed to educate attendees on mass transit or other alternative transportation methods for transit to and from the event center.

(5) Achieving a designated average vehicle ridership for vehicles which carry persons who are traveling to or from their employment at an event center.

(6) Other emission reduction strategies not relating to reductions in vehicle trips or vehicle miles traveled by event center attendees.

CHAPTER 426

An act to add Section 12828.5 to the Food and Agricultural Code, relating to economic poisons.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 12828.5 is added to the Food and Agricultural Code, to read:

12828.5. (a) A registrant at any time may request that the registration of any of its economic poisons be voluntarily canceled. The request shall be in writing and shall include a waiver of the registrant's right to a hearing on the cancellation.

(b) The director shall mail a notice of cancellation of registration of the economic poison to the registrant. The notice shall specify the effective date of the cancellation.

(c) The economic poison for which the registration is canceled may be sold and possessed as if the product's registration was not renewed unless the director determines that protection of human health or the environment require otherwise, in which case the cancellation notice shall specify the conditions under which the product may be sold or possessed after cancellation of its registration.

CHAPTER 427

An act to add Section 54042 to the Food and Agricultural Code, and to amend Section 23153 of the Revenue and Taxation Code, relating to cooperative associations, to take effect immediately, tax levy.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 54042 is added to the Food and Agricultural Code, to read:

54042. (a) An association organized pursuant to this chapter may request the board of supervisors of the county in which the association's principal place of business is located to issue a certificate stating that the association meets the requirements of subdivision (b). When the certificate is provided by the board of supervisors to the association, the Franchise Tax Board shall exempt the association from the minimum franchise tax as provided in paragraph (2) of subdivision (c) of Section 23153 of the Revenue and Taxation Code.

(b) The board of supervisors shall issue a certificate if all of the

following conditions are met:

(1) The association is located in an economically distressed area.

(2) At least 90 percent of the association's members are, or have been, within the previous 12 months unemployed or dependent on public social services for their income.

(3) The request is made during the association's first income year.

(c) The certificate issued by the board of supervisors shall be retained by the association. The association shall forward a copy of the certificate to the Franchise Tax Board upon request.

(d) As used in this section, "economically distressed area" means a county in which the unemployment rate is either 9 percent, or 2 percent above the statewide average, whichever is greater; or in which 8 percent of the residents are dependent on public social services for their income, or 2 percent more of the residents than the statewide average are dependent on public social services for their income, whichever is greater.

SEC. 2. Section 23153 of the Revenue and Taxation Code is amended to read:

23153. (a) Every bank and corporation described in subdivision (b) shall be subject to the minimum franchise tax specified in subdivision (d) from the earlier of the date of incorporation, qualification, or commencing to do business within this state, until the effective date of dissolution or withdrawal as provided in Section 23331 or, if later, the date the corporation ceases to do business within the limits of this state.

(b) Unless expressly exempted by this part or the California Constitution, subdivision (a) shall apply to each of the following:

(1) Every bank or corporation that is incorporated under the laws of this state.

(2) Every bank or corporation that is qualified to transact intrastate business in this state pursuant to Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(3) Every bank or corporation that is doing business within the limits of this state.

(c) The following entities are not subject to the minimum franchise tax specified in this section:

(1) Credit unions.

(2) Nonprofit cooperative associations organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code that have been issued the certificate of the board of supervisors prepared pursuant to Section 54042 of the Food and Agricultural Code. The association shall be exempt from the minimum franchise tax for five consecutive income years, commencing with the first income year for which the certificate is issued pursuant to subdivision (b) of Section 54042 of the Food and Agricultural Code. This paragraph only applies to nonprofit cooperative associations organized on or after January 1, 1994.

(d) (1) Except as provided in paragraph (2), banks and corporations subject to the minimum franchise tax shall pay annually

to the state a minimum franchise tax of eight hundred dollars ($800).

(2) The minimum franchise tax shall be twenty-five dollars ($25) for each of the following:

(A) A corporation formed under the laws of this state whose principal business when formed was gold mining, which is inactive and has not done business within the limits of the state since 1950.

(B) A corporation formed under the laws of this state whose principal business when formed was quicksilver mining, which is inactive and has not done business within the limits of the state since 1971, or has been inactive for a period of 24 consecutive months or more.

(3) For purposes of paragraph (2), a corporation shall not be considered to have done business if it engages in other than mining.

(e) Notwithstanding subdivision (a), a domestic bank or domestic corporation, as defined in Section 167 of the Corporations Code, that files a certificate of dissolution in the office of the Secretary of State pursuant to subdivision (c) of Section 1905 of the Corporations Code and that does not thereafter do business shall not be subject to the minimum franchise tax for income years beginning on or after the date of that filing.

(f) The minimum franchise tax imposed by paragraph (1) of subdivision (d) shall not be increased by the Legislature by more than 10 percent during any calendar year.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 428

An act to amend Sections 11503 and 11504 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 11503 of the Vehicle Code is amended to read:

11503. The department may refuse to issue a license to an applicant when it determines any of the following:

(a) The applicant was previously the holder, or a managerial employee of the holder, of a license issued under this chapter which was revoked for cause and never reissued by the department, or which was suspended for cause and the terms of suspension have not been fulfilled.

(b) The applicant was previously a business representative whose license issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled.

(c) If the applicant is a business, a business representative was previously the holder of a license, or was a business representative of a business whose license, issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled; or, by reason of the facts and circumstances related to the organization, control, and management of the business, the operation of that business will be directed, controlled, or managed by individuals who, by reason of their conviction of violations of this code, would be ineligible for a license and, by licensing that business, the purposes of this chapter would be defeated.

(d) The applicant, or a business representative if the applicant is a business, has been convicted of a crime or has committed any act or engaged in conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(e) The information contained in an application is incorrect .

(f) A decision of the department to cancel, suspend, or revoke a license has been made, and the applicant was a business representative of the business regulated under that license.

SEC. 2. Section 11504 of the Vehicle Code is amended to read:

11504. (a) Every applicant who applies for a license pursuant to Section 11501 shall submit an application to the department on the forms prescribed by the department. The applicant shall provide the department with information as to the applicant's character,

honesty, integrity, and reputation, as the department may consider necessary. The department, by regulation, shall prescribe what information is required of the applicant for the purposes of this subdivision, and the applicant shall provide that information under penalty of perjury. In addition to any other information required by the department, the department shall require the applicant to furnish all of the following information on any application for a new license or the renewal of a license, if the applicant is required by other provisions of law to have the following permits, numbers, or plan:

(1) Board of Equalization resale permit number.

(2) Identification number issued by the California Environmental Protection Agency.

(3) A statement indicating that the applicant has either filed an application for a storm water permit or is not required to obtain a storm water permit.

(4) A statement indicating that the applicant has either filed a hazardous materials business plan or is not required to file that plan.

(5) The tax identification number assigned by the Franchise Tax Board.

(b) Upon receipt of an application for a license that is accompanied by the appropriate fee, the department shall, not later than 120 days from the receipt of that application, make a thorough investigation of the information contained in the application, except the information specified in paragraphs (1) to (5), inclusive, of subdivision (a).

(c) Every person holding a license issued pursuant to Section 11501 shall notify the department, within 10 days, of any change in the ownership or corporate structure of the licensee.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 429

An act to amend Section 39620 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 39620 of the Health and Safety Code is amended to read:

39620. (a) The state board shall implement a program to assist districts to improve efficiencies in the issuance of permits pursuant to this division. The program shall be consistent with the requirements of Title V.

(b) (1) The program shall include a process, developed in coordination with the districts, for the state board to precertify simple, commonly used equipment and processes as being in compliance with applicable air quality rules and regulations, under conditions specified by the state board. The state board shall develop criteria and guidelines for precertification in coordination with the districts.

(2) The state board shall charge a reasonable fee for precertification, not to exceed the state board's estimated costs. Payment of the fee shall be a condition of precertification.

(3) Precertification shall not affect any existing authority of a district regarding permitting and compliance requirements. Precertification shall constitute a preliminary evaluation of the equipment or process, and a recommendation by the state board for permit conditions to be adopted by a district having jurisdiction over particular equipment or a particular process, that would allow district permitting staff to more quickly process permit applications for air pollution sources.

(4) The California Environmental Protection Agency, within existing resources, and in consultation with appropriate state and local regulatory agencies, shall evaluate the feasibility and benefits of expanding the precertification program to involve other state and local regulatory agencies with jurisdiction over other environmental media, including land and water.

CHAPTER 430

An act to amend Section 40916 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 40916 of the Health and Safety Code is amended to read:

40916. (a) The state board shall make technical assistance available to a district, at the district's request, to support attainment planning and air pollutant transport planning and associated analyses. If the state board lacks sufficient resources to make technical assistance available to each district which requests assistance, the state board shall give priority to those districts which have limited financial or technical capabilities.

(b) The state board shall develop guidelines for use by the districts to prepare emission inventories, develop monitoring networks, and develop methods for the validation of air quality models.

(c) The state board shall develop and periodically update guidelines to be used by the districts for the purpose of establishing equivalent emission reduction targets for alternative strategies to vehicle trip reduction transportation control measures that are required pursuant to Sections 40918, 40919, 40920, and 40920.5.

CHAPTER 431

An act to add Sections 24104 and 24104.5 to the Food and Agricultural Code, and to add Chapter 1.5 (commencing with Section 13050) to Title 3 of Part 4 of the Penal Code, relating to livestock.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 24104 is added to the Food and Agricultural Code, to read:

24104. Each sheriff or other officer to whom a complaint that relates to the loss or theft of any animal is made shall, in a timely manner, transmit to the Bureau of Livestock Identification a report that contains all of the following:

(a) A complete description of each animal lost or stolen including

approximate age, height, and weight, sex, breed, color, natural marks, scars, a description of each brand or tattoo and its location on the animal, and any other information that may be of use in identifying, locating and receiving the lost or stolen animal.

(b) The county or city where the loss or theft occurred.

(c) The approximate date and time of the loss or theft.

(d) The law enforcement agency's report identification or number.

(e) The name, address, and telephone number of the law enforcement agency that completed the report.

(f) The name of that law enforcement agency's investigating officer to be contacted relating to the loss or theft.

SEC. 2. Section 24104.5 is added to the Food and Agricultural Code, to read:

24104.5. The Bureau of Livestock Identification shall compile a report on information received pursuant to Section 24104. The bureau shall distribute the report to all county sheriffs' departments in a timely manner.

SEC. 3. Chapter 1.5 (commencing with Section 13050) is added to Title 3 of Part 4 of the Penal Code, to read:

CHAPTER 1.5. REPORTS TO THE BUREAU OF LIVESTOCK IDENTIFICATION

13050. Each sheriff or other officer to whom a complaint that relates to the loss or theft of any equine animal is made shall, in a timely manner, transmit to the Bureau of Livestock Identification a report pursuant to Section 24104 of the Food and Agricultural Code.

13051. The Bureau of Livestock Identification shall compile a report on information received pursuant to Section 24104 of the Food and Agricultural Code. The bureau shall distribute the report to all county sheriffs' departments in a timely manner.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 432

An act to amend Section 10164 of the Public Contract Code, relating to contracting by state agencies.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 10164 of the Public Contract Code is amended to read:

10164. In all state projects where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of this state. However, at the time the contract is awarded, the contractor shall be properly licensed in accordance with the laws of this state. The contract shall not be awarded unless the state agency has verified that the contractor has a valid license in the appropriate classification for the work performed. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors State License Board. The department shall include a statement to that effect in the standard form of prequalification questionnaire and financial statement. Failure of the bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract as provided in Section 10181 and shall result in the forfeiture of the security of the bidder.

CHAPTER 433

An act to amend Section 711.4 of the Fish and Game Code, relating to environmental review fees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 711.4 of the Fish and Game Code is amended to read:

711.4. (a) The department shall impose and collect a filing fee in the amount prescribed in subdivision (d) to defray the costs of managing and protecting fish and wildlife trust resources, including, but not limited to, consulting with other public agencies, reviewing environmental documents, recommending mitigation measures, developing monitoring requirements for purposes of the California

Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), consulting pursuant to Section 21104.2 of the Public Resources Code, and other activities protecting those trust resources identified in the review pursuant to the California Environmental Quality Act.

(b) The filing fees shall be proportional to the cost incurred by the department and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the full costs of department programs as specified.

(c) (1) All project applicants and public agencies subject to the California Environmental Quality Act shall pay a filing fee for each proposed project.

(2) Notwithstanding paragraph (1), no filing fee shall be paid pursuant to this section if the lead or certified regulatory program agency finds that the project is either of the following:

(A) Categorically exempt from the California Environmental Quality Act.

(B) De minimis in its effect on fish and wildlife.

(3) Notwithstanding paragraph (1), no filing fee shall be paid pursuant to this section if all the following conditions exist:

(A) The project is being undertaken by the department.

(B) The project costs are payable from any of the following sources:

(i) The Public Resources Account in the Cigarette and Tobacco Products Surtax Fund.

(ii) The California Wildlife, Coastal, and Park Land Conservation Fund of 1988.

(iii) The Habitat Conservation Fund.

(iv) The Fisheries Restoration Account in the Fish and Game Preservation Fund.

(v) The Commercial Salmon Stamp Account in the Fish and Game Preservation Fund.

(vi) Striped bass stamp funds collected pursuant to Section 7360.

(C) The project is implemented through a contract with either a nonprofit entity or a local government agency. The filing fee shall be paid at the time and in the amount specified in subdivision (d). Notwithstanding Sections 21080.5 and 21081 of the Public Resources Code, no project shall be operative, vested, or final until the filing fees required pursuant to this section are paid.

(d) The fees shall be in the following amounts:

(1) For a project which is found by the lead or certified regulatory agency to be de minimis in its effect on fish and wildlife, no filing fee shall be paid, whether or not a negative declaration or an environmental impact report is prepared pursuant to the California Environmental Quality Act.

(2) For a project which is statutorily or categorically exempt from the California Environmental Quality Act, including those certified regulatory programs which incorporate statutory and categorical exemptions, no filing fee shall be paid.

(3) For a project for which a negative declaration is prepared pursuant to subdivision (c) of Section 21080 of the Public Resources Code, the filing fee is one thousand two hundred fifty dollars ($1,250). The filing fee shall be paid to the county clerk at the time of filing a notice of determination pursuant to Section 21152 of that code or to the Office of Planning and Research at the time of filing a notice of determination pursuant to Section 21108 of that code, as appropriate.

(4) For a project with an environmental impact report prepared pursuant to the California Environmental Quality Act, the filing fee is eight hundred fifty dollars ($850). The filing fee shall be paid to the county clerk at the time of filing a notice of determination pursuant to Section 21152 of the Public Resources Code or to the Office of Planning and Research at the time of filing a notice of determination pursuant to Section 21108 of that code.

(5) For a project which is subject to a certified regulatory program pursuant to Section 21080.5 of the Public Resources Code, the filing fee is eight hundred fifty dollars ($850). The filing fee shall be paid to the Secretary of the Resources Agency upon filing of the notice of determination pursuant to Section 21080.5 of that code. If the filing fee is to be paid by the state lead agency, the payment shall be made pursuant to a memorandum of understanding with the department.

(e) The county clerk may charge a documentary handling fee of twenty-five dollars ($25) per filing in addition to the filing fee specified in subdivision (d).

(1) The county clerk of each county and the Office of Planning and Research shall maintain a record of all environmental documents received. The record shall include, for each environmental document received, the name of each applicant or lead agency, the document filing number, and the filing date. The record shall be made available for examination or audit by authorized personnel of the department during normal business hours.

(2) The filing fee imposed and collected pursuant to subdivision (d) shall be remitted monthly to the department within 30 days after the end of each month. The amount of fees due shall be reported on forms prescribed and provided by the department.

(3) The department shall assess a penalty of 10 percent of the amount of fees due for any failure to remit the amount payable when due. The department may pursue collection of delinquent fees through the Controller's office pursuant to Section 12419.5 of the Government Code.

(f) Notwithstanding Section 12000, failure to pay the fee under subdivision (d) is not a misdemeanor. All unpaid fees are a statutory assessment subject to collection under procedures as provided in the Revenue and Taxation Code.

(g) Only one filing fee shall be paid for each project unless the project is tiered or phased, and separate environmental documents

or review by the department is required.

(h) This section does not preclude or modify the duty of the department to recommend, require, permit, or engage in mitigation activities pursuant to the California Environmental Quality Act.

(i) The permit process of the California Coastal Commission, as certified by the Secretary of the Resources Agency, is exempt from the payment of the filing fees prescribed by paragraph (5) of subdivision (d) insofar as the permits are issued under any of the following regulations:

(1) Subchapter 4 (commencing with Section 13136) of Chapter 5 of Division 5.5 of Title 14 of the California Code of Regulations.

(2) Subchapter 1 (commencing with Section 13200), Subchapter 3 (commencing with Section 13213), Subchapter 3.5 (commencing with Section 13214), Subchapter 4 (commencing with Section 13215), Subchapter 4.5 (commencing with Section 13238), Subchapter 5 (commencing with Section 13240), Subchapter 6 (commencing with Section 13250), and Subchapter 8 (commencing with Section 13255) of Chapter 6 of Division 5.5 of Title 14 of the California Code of Regulations.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for this act to take effect in time for the 1994 summer construction season, it is necessary for this act to take effect immediately.

CHAPTER 434

An act to amend Sections 221, 19315, and 19447 of, to add Section 19228 to, and to add and repeal Section 19227 of, the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 221 of the Food and Agricultural Code is amended to read:

221. The "Department of Food and Agriculture Fund," which is a special fund, is continued in existence. Any money that is directed by law to be paid into the fund shall be paid into it and, unless otherwise specifically provided, shall be expended solely for the enforcement of the law under which the money was derived. The expenditure from the fund for the enforcement of any law shall not, unless otherwise specifically provided, exceed the amount of money

that is credited to the fund pursuant to the law.

Notwithstanding Section 13340 of the Government Code, all money deposited in the fund under the provisions enumerated below is hereby continuously appropriated to the department without regard to fiscal years for expenditure in carrying out the purposes for which the money was deposited and for making the refunds authorized by Section 302.

All money deposited in the fund under the provisions enumerated below is hereby exempted from Sections 13320 to 13324, inclusive, of the Government Code.

(a) Article 7 (commencing with Section 5821) of Chapter 8 of Part 1 of Division 4, Chapter 1 (commencing with Section 6701) of Part 3 of Division 4, and Chapter 5 (commencing with Section 53301) of Division 18.

(b) Article 5 (commencing with Section 6001) of Chapter 9 of Part 1 of Division 4.

(c) Article 4.5 (commencing with Section 6971) and Article 5 (commencing with Section 6981) of Chapter 2 of Part 3 of Division 4.

(d) Chapter 4 (commencing with Section 14200), Chapter 5 (commencing with Section 14501), and Chapter 6 (commencing with Section 14901) of Division 7.

(e) Part 1 (commencing with Section 16301) and Part 2 (commencing with Section 17401) of Division 9.

(f) Sections 19225, 19227, 19312, and 19315.

(g) Division 10 (commencing with Section 20001).

(h) Division 11 (commencing with Section 23001).

(i) Part 4 (commencing with Section 27501) of Division 12.

(j) Division 16 (commencing with Section 40501).

(k) Chapter 9 (commencing with Section 44971) of Division 17.

(*l*) Chapter 1 (commencing with Section 52001) of Division 18.

(m) Chapter 2 (commencing with Section 52251) of Division 18.

(n) Chapter 3 (commencing with Section 52651) of Division 18.

(o) Chapter 4 (commencing with Section 52851) of Division 18.

(p) Chapter 6 (commencing with Section 55401), Chapter 7 (commencing with Section 56101), and Chapter 7.5 (commencing with Section 56701) of Division 20.

(q) Section 58582.

(r) Chapter 1 (commencing with Section 61301), Chapter 2 (commencing with Section 61801), and Chapter 3 (commencing with Section 62700) of Part 3 of Division 21.

(s) Chapter 5.5 (commencing with Section 12531) of Division 5 of the Business and Professions Code.

(t) Chapter 7 (commencing with Section 12700) of Division 5 of the Business and Professions Code.

(u) Chapter 14 (commencing with Section 13400) and Chapter 15 (commencing with Section 13700) of Division 5 of the Business and Professions Code.

SEC. 2. Section 19227 is added to the Food and Agricultural Code,

to read:

19227. (a) In addition to the license fee required pursuant to Section 19225, the department may charge each licensed renderer and collection center an additional fee necessary to cover the costs of administering Article 5 (commencing with Section 19280), Article 6 (commencing with Section 19300), Article 6.5 (commencing with Section 19310), Article 7 (commencing with Section 19320), and Article 8 (commencing with Section 19340). The additional fees authorized to be imposed by this section may not exceed three thousand dollars ($3,000) per year per each licensed rendering plant or collection center.

(b) The secretary shall fix the annual fee established pursuant to this section and may fix different fees for renderers and collection centers. The secretary shall also fix the date the fee is due and the method of collecting the fee. If an additional fee is imposed on licensed renderers pursuant to subdivision (a) and an additional fee is imposed on registered transporters pursuant to subdivision (a) of Section 19315, only one additional fee may be imposed on a person or firm that is both licensed as a renderer pursuant to Article 6 (commencing with Section 19300) and registered as a transporter of inedible kitchen grease pursuant to Article 6.5 (commencing with Section 19310), which fee shall be the higher of the two fees.

(c) If the fee established pursuant to this section is not paid within one calendar month of the date it is due, a penalty shall be imposed in the amount of 10 percent per annum on the amount of the unpaid fee.

(d) This section shall become inoperative on July 1, 2000, and, as of January 1, 2001, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 19228 is added to the Food and Agricultural Code, to read:

19228. All fees, charges, and collections collected pursuant to Sections 19225, 19227, 19312, and 19315 shall be paid into the State Treasury monthly to the credit of the Department of Food and Agriculture Fund. All fees, charges, and collections collected pursuant to Sections 19225, 19227, 19312, and 19315 shall be used for the enforcement of this chapter.

SEC. 4. Section 19315 of the Food and Agricultural Code is amended to read:

19315. (a) In addition to the registration fee required by Section 19312, the department may charge an additional fee necessary to cover the costs of administering this article. Any additional fee charged pursuant to this section shall not exceed three hundred dollars ($300) per year per vehicle that is operated to transport kitchen grease, and shall not exceed three thousand dollars ($3,000) per year per registered transporter.

(b) The secretary shall fix the annual fee established pursuant to this section and may fix different fees for transporters of inedible

kitchen grease and collection centers. The secretary shall also fix the date the fee is due and the method of collecting the fee. If an additional fee is imposed on licensed renderers pursuant to subdivision (a) of Section 19227 and an additional fee is imposed on registered transporters pursuant to subdivision (a), only one additional fee may be imposed on a person or firm that is both licensed as a renderer pursuant to Article 6 (commencing with Section 19300) and registered as a transporter of inedible kitchen grease pursuant to this article, which fee shall be the higher of the two fees.

(c) If the fee established pursuant to this section is not paid within one calendar month of the date it is due, a penalty shall imposed in the amount of 10 percent per annum on the amount of the unpaid fee.

SEC. 5. Section 19447 of the Food and Agricultural Code is amended to read:

19447. (a) In lieu of any civil action pursuant to Section 19445, and in lieu of seeking prosecution, the secretary may levy a civil penalty against a person who violates Article 6 (commencing with Section 19300), Article 6.5 (commencing with Section 19310), or any regulation adopted pursuant to those articles, in an amount not to exceed one thousand dollars ($1,000) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be granted an opportunity to be heard. This shall include the right to review evidence and a right to present evidence on his or her own behalf.

(c) Any person upon whom a civil penalty is levied may appeal to the secretary within 10 days of the date of receiving notification of the penalty, as follows:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent and shall state the grounds for the appeal.

(2) Any party may, at the time of filing the appeal, or within 10 days thereafter, present written evidence and a written argument to the secretary.

(3) The secretary may grant oral arguments upon application made at the time written arguments are made.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days prior to the date set therefor. This time requirement may be altered by an agreement between the secretary and the person appealing the penalty.

(5) The secretary shall decide the appeal on any oral or written arguments, briefs, and evidence that he or she has received.

(6) The secretary shall render a written decision within 45 days of the date of appeal, or within 15 days of the date of oral arguments. A copy of the secretary's decision shall be delivered or mailed to the appellant.

(7) The secretary may sustain the decision, modify the decision by

reducing the amount of the penalty levied, or reverse the decision.

(8) A review of the decision of the secretary may be sought by the appellant pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) Any penalties levied by the secretary pursuant to this section shall be deposited in the General Fund.

CHAPTER 435

An act to amend Section 25261 of, and to add Chapter 6.85 (commencing with Section 25396) to Division 20 of, the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 25261 of the Health and Safety Code is amended to read:

25261. (a) There is within the California Environmental Protection Agency a Site Designation Committee. The membership of the committee consists of the following six persons:

(1) Secretary for Environmental Protection.

(2) Director of Toxic Substances Control.

(3) Chairperson of the State Water Resources Control Board.

(4) Director of Fish and Game.

(5) Director of the Office of Environmental Health Hazard Assessment.

(6) Chairperson of the State Air Resources Board.

(b) The committee shall carry out the functions described in Sections 25262, 25263, and 25265 and shall meet as necessary to ensure that those functions are carried out in a timely manner. The decisions of the committee shall be subject to the concurrence of four members. The committee shall choose a chairperson from among its members. A committee member may designate an employee of the member's agency to participate in committee meetings in the member's place.

SEC. 2. Chapter 6.85 (commencing with Section 25396) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 6.85. CALIFORNIA EXPEDITED REMEDIAL ACTION REFORM ACT OF 1994

Article 1. Definitions

25396. Unless the context indicates otherwise, the following definitions govern the construction of this chapter.

(a) "Affected community" means the local residents or workers

living or working, and owners of businesses operating, in proximity to the site, who are, or may be, directly impacted by the conditions at the site, or by any response action. "Affected community" also includes the legislative body of the jurisdiction in which a site is located.

(b) "Agency" means the California Environmental Protection Agency.

(c) "Arbitration panel" means the arbitration panel convened pursuant to Section 25398.10.

(d) "Beneficial uses of water" means uses of the waters of the state that are identified in the current State Water Resources Control Board and regional water quality control boards' water quality control plans for the area in which the site is located.

(e) "Department" means the Department of Toxic Substances Control.

(f) "Engineering controls" means measures to control or contain migration of hazardous substances or to prevent, minimize or mitigate environmental damage which may otherwise result from a release or threatened release, including, but not limited to, caps, covers, dikes, trenches, leachate collection systems, treatment systems, and groundwater containment systems or procedures.

(g) "Federal act" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (42 U.S.C. Sec. 9601 et seq.).

(h) "Fund administrator" means the state officer assigned the responsibility of protecting the viability of the trust fund as the representative of the state for the orphan share in all actions concerning apportionment of liability if there is a potential apportionment of liability to the orphan share for payment from the trust fund.

(i) "Hazardous substance" shall have the same meaning as set forth in Sections 25316 and 25317.

(j) (1) "Insolvent" means a person or entity who has received a discharge of liability under Section 727, 944, or 1141 of Title 11 of the United States Code, for pre-petition response costs relating to a site selected for response actions pursuant to this chapter.

(2) Notwithstanding paragraph (1), a person or entity is not insolvent with respect to any payment that the department receives or will receive for any pre-petition response costs as a result of the bankruptcy, or with respect to any post-petition response costs.

(k) "Interim endangerment" means conditions at a site which pose a significant risk either of harm to human health or of serious environmental damage unless immediate response action is initiated before remedial action measures set forth in a remedial action plan prepared for the site are implemented.

(*l*) "Land use controls" means recorded instruments restricting the present and future uses of the site, including, but not limited to, recorded easements, covenants, restrictions or servitudes, or any combination thereof, as appropriate. Land use controls shall run with

the land from the date of recordation, shall bind all of the owners of the land, and their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees, and shall be enforceable by the department pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5.

(m) "Orphan share" means that share of liability for the costs of response actions apportioned to responsible persons who are insolvent or cannot be identified or located. The department may adopt regulations to further define a process to determine when a responsible person cannot be identified or located.

(n) "Person" shall have the same meaning as set forth in Section 25319.

(o) "Planned use" means the reasonably expected future land uses based on all of the following factors:

(1) The land use history of the site and surrounding properties, the current land uses of the site and surrounding properties and recent development patterns in the area where the site is located.

(2) Land use designations at the site and surrounding properties, including current and likely future zoning and local land use plans and the presence, if any, of groundwater and surface water recharge areas.

(3) The potential for economic redevelopment.

(4) Current plans for the site by the property owner or owners.

(5) Affected community comments on the proposals for use of the site.

(p) "Release" has the same meaning as set forth in Sections 25320 and 25321.

(q) "Remedy" or "remedial action" means actions that are necessary to prevent, minimize, or mitigate damage that may result from a release or threatened release of a hazardous substance and that, when carried through to completion, allow a site to be permanently used for its planned use without any significant risk to human health or any significant potential for future environmental damage. "Remedy" or "remedial action" includes, but is not limited to, all of the following:

(1) Actions at the location of the release, such as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling, reuse, diversion, destruction, or segregation of reactive wastes, dredging, excavation, repair, or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to ensure that these actions protect the public health and the environment.

(2) The costs of permanent relocation of residents and businesses and community facilities where the Governor determines that, alone or in combination with other measures, this relocation is more cost-effective than, and environmentally preferable to, the transportation, storage, treatment, destruction, or secure disposition

offsite of hazardous substances, or may otherwise be necessary to protect the public health.

(3) Offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.

(r) "Remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, those actions which may be necessarily taken in the event of the threat or release of hazardous substances into the environment, those actions which may be necessary to monitor, assess, and evaluate the release, or threat of release, of hazardous substances, the disposal of removed material, and the taking of other actions which may be necessary to prevent, minimize, or mitigate damage to the public health or the environment, which may otherwise result from a release or threat of release. "Remove" or "removal" also includes, but is not limited to, security fencing or other measures to limit access, provision of alternative water supplies, and temporary evacuation and housing of threatened individuals not otherwise provided.

(s) "Respond," "response," or "response action" means removal actions, and remedial actions, including, but not limited to, operation and maintenance measures.

(t) "Response costs" means all costs incurred by the state or any responsible person in taking response actions under this chapter, including costs incurred by any state agency in implementing and administering this chapter and in overseeing response actions under this chapter. These costs shall include all costs incurred by the state in relation to any judicial review of a decision of an arbitration panel pursuant to subdivision (e) of Section 25398.10 or any arbitration conducted pursuant to this chapter.

(u) "Responsible person" has the same meaning as set forth in Section 25323.5 for "responsible party" or "liable person."

(v) "Secretary" means the Secretary for Environmental Protection.

(w) "Site" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

(x) "Site Designation Committee" or "committee" means the Site Designation Committee created pursuant to Section 25261.

(y) "State board" means the State Water Resources Control Board.

(2) "Trust fund" means the Expedited Site Remediation Trust Fund created pursuant to subdivision (a) of Section 25399.1.

25396.1. This chapter shall be known and may be cited as the California Expedited Remedial Action Reform Act of 1994.

25396.2. Chapter 3 (commencing with Section 856) of Title 3 of

Part 2 of Division 2 of the Civil Code does not apply to a site which is subject to a response action pursuant to this chapter.

Article 2. Site Selection

25396.5. (a) The intent of this chapter is to establish a pilot program to determine if expedited procedures for carrying out response actions at response action sites are appropriate and protective of human health and the environment.

(b) This chapter is applicable to not more than 30 response action sites, of which not more than 10 may have an orphan share. The department, upon a request from a responsible person for consideration of a site for remediation pursuant to this program, shall forward the request to the Site Designation Committee, along with the department's recommendation as to whether the site should be selected. The department shall also forward the request to the local jurisdiction in which the site is located, to allow that local jurisdiction to submit comments to the committee concerning the request.

25396.6. The committee may select a site for remediation pursuant to this chapter only if the site meets all of the following conditions:

(a) The department is the appropriate administering agency for the site pursuant to Section 25236 and the committee designates the department as the administering agency.

(b) The responsible person or persons requesting selection of the site have submitted a completed preliminary endangerment assessment, as defined in Section 25319.5, which concludes that significant response actions are necessary at the site and includes an analysis of the scope and identity of the affected community.

(c) The committee finds all of the following:

(1) The site is not on, or eligible to be placed on, the National Priority List prepared pursuant to the federal act, or is not a site which is owned or operated by a department, agency, or instrumentality of the United States.

(2) There are funds available in the trust fund to cover all of the response action costs that will or may be assigned to the orphan share at the site, unless one or more of the responsible persons who have submitted a notice of intent under paragraph (3) agree in writing to pay for the orphan share at the site that cannot be paid by the state because of insufficient funding in the trust fund. Any agreement to pay orphan share costs, which the fund cannot pay, shall be backed by adequate forms of financial security, as determined by the department.

(3) One or more responsible persons submit a notice of intent to the department to do all of the following:

(A) Be bound by the requirements of this chapter.

(B) Enter into an enforceable agreement with the department, as set forth in paragraph (1) of subdivision (b) of Section 25398.2.

(C) Pay all response costs not otherwise paid by the trust fund or

another responsible person.

(4) There is no known condition of interim endangerment existing at the site at the time it is selected for response actions pursuant to this chapter.

(5) (A) Except as provided in subparagraph (B), the department has not already issued an order or entered into an enforceable agreement with responsible parties at the site under Chapter 6.8 (commencing with Section 25300), the department has not commenced a judicial action against responsible persons at the site, and no orders have been issued by a court requiring responsible persons at the site to take response actions or to pay the department's response costs at the site.

(B) The committee may waive the requirements of subparagraph (A) for not more than five sites if the committee determines that the selection of the site, for response action pursuant to this chapter, will not delay response action at the site and is otherwise in the public interest.

25397. (a) Except to the extent otherwise specified in this chapter, response actions for a site selected pursuant to Section 25396.6 shall be taken pursuant to this chapter, and the requirements of Chapter 6.8 (commencing with Section 25300) shall not apply. In addition, the provisions of Chapter 6.65 (commencing with Section 25260) shall apply to all response actions taken at sites selected pursuant to this chapter, including the requirement that the response action be implemented in compliance with all state and local laws, ordinances, regulations, and standards that are applicable to the response action.

(b) The committee may, as part of the findings required by Section 25396.6, direct that an advisory committee be convened pursuant to Section 25263 to ensure that the department receives adequate guidance in overseeing response action at a site that is selected for remedial action under this chapter.

(c) An advisory committee convened pursuant to subdivision (b) shall have the same powers and duties as an advisory committee that is convened pursuant to Section 25263. The advisory committee shall be bound by the decisions of an arbitration panel and any court decisions rendered upon judicial review.

(d) The department shall maintain a list of sites selected for response action pursuant to this chapter and shall make this list available to interested parties.

Article 3. Prerequisites of the Program

25397.1. Any action taken by the department pursuant to this chapter shall be consistent with all applicable regulations adopted by the State Water Resources Control Board, all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code, and all applicable state policies for

water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, to the extent the department determines that those regulations, plans, and policies are not less stringent than this chapter and the regulations adopted pursuant to this chapter.

25397.2. The department shall ensure that the public is given the opportunity to participate in response actions taken pursuant to this chapter in accordance with the department's public policy and procedures manual, No. OPP-94-002.

25397.3. Nothing in this chapter shall be construed to restrict the rights of responsible persons and the department to agree upon other voluntary methods of remediation.

Article 4. Expedited Site Remediation

25398. (a) The department shall serve as the lead agency for implementing this chapter and shall act as the oversight agency for purposes of all response actions taken pursuant to this chapter.

(b) After a site has been selected for response action under this chapter, and prior to holding the conference specified in Section 25398.2, the department shall, after necessary investigation, including a title search of the site, if appropriate, notify appropriate state and local agencies and all known potentially responsible persons for that site of all of the following:

(1) The names and addresses of all potentially responsible persons who the department has identified at the site, and the factual and statutory basis for that identification.

(2) That the site has been selected for response action under this chapter, that the potentially responsible person's rights and liabilities with respect to the site will be determined under this chapter, and that the potentially responsible person will be bound by that determination.

(3) A description of the known extent and type of hazardous substance that has been released or is threatened to be released on, at, or from the site.

(4) The date, time, and place for the conference specified in Section 25398.2.

(c) After the notice provided for in subdivision (b) has been issued, the department shall notify any additional persons who have been subsequently identified by the department as potentially responsible persons, of the selection of the site under this chapter. This notification shall include all the information specified in subdivision (b) except that the date, time, and place of the conference specified in Section 25398.2 need not be included if that conference has already taken place. The department shall also send such notifications to the other potentially responsible parties who have already been identified.

(d) (1) The department shall notify the city or county in which any site is located that a response action has been initiated pursuant

to this chapter. The department shall provide the city or county with notice of the time, date, and place of all public hearings and meetings regarding the response action, shall provide the city or county with regular response action progress reports, and shall involve the city or county in any deliberation concerning land use controls or actions proposed pursuant to subdivision (c) of Section 25398.7. The department shall request the city or county to provide the department with the city's or county's assessment of the planned use of the site, including the current and future zoning and general plan designations for the site and the city's or county's determination as to the appropriate planned use designation in the remedial action plan prepared for the site. The city's or county's determination as to the appropriate planned use designation shall be presumed by the department to be the appropriate planned use for the site. In any action or proceeding to attack, set aside, void, or annul a determination of the appropriate planned use by the city or county pursuant to this section, there shall be a rebuttable presumption of the validity of the determination by the city or county. The department may rebut that presumption by showing, based upon substantial evidence in the record, that the requirements of this chapter are more fully satisfied by a determination that there should be a different planned use for the site.

(2) Before making a determination regarding the planned use for the site, the department shall hold a public hearing on that issue and shall consider all comments received at the hearing. The department shall thereafter determine the planned use and provide a written explanation supporting its determination to the city or county and to any person requesting an explanation.

(e) Nothing in this chapter shall be construed to affect the authority of a city or county pursuant to Title 7 (commencing with Section 65000) of the Government Code.

25398.2. (a) Within 90 days of the selection of a site pursuant to Section 25396.6, the department shall hold a conference with the identified potentially responsible persons for purposes of explaining all of the following:

(1) The department's requirements for the performance of a site investigation and the preparation of a site investigation report to determine the nature and extent of possible releases of hazardous substances at the site.

(2) The department's requirements for a community assessment.

(3) The department's procedures for carrying out response activities, including requirements for public participation.

(b) (1) Except as provided in paragraph (2), within 90 days after the conference, the department may enter into an enforceable agreement with one or more responsible persons for a site selected pursuant to Section 25396.6. The enforceable agreement shall require all of the following:

(A) The responsible person shall take necessary response actions at the site pursuant to this chapter.

(B) The responsible person or persons shall pay all of the state's response costs that are related to the site on an ongoing basis, within 60 days from the date of receipt of each invoice from the department. After liability is finally apportioned pursuant to this chapter, each participating responsible person's share of response costs may be adjusted in relation to the shares of other participating responsible persons. Any agreement to pay orphan share costs, which the fund cannot pay, shall be backed by adequate forms of financial security, as determined by the department.

(C) The department and the responsible person enter into a covenant not to sue each other or any responsible person who has entered into an enforceable agreement under this section pursuant to the federal act. However, any site selected for remediation pursuant to this chapter shall not be immune from, and, if appropriate, may be subject to, natural resource damage claims pursuant to subdivision (f) of Section 9607 of the federal act.

(D) If a responsible person subject to the agreement fails to comply with the requirements of this chapter or any regulation, requirement, or order issued or adopted pursuant to this chapter, the department shall remove the site from eligibility for response action pursuant to Chapter 6.65 (commencing with Section 25260) and this chapter, and may direct that any further response actions at that site be taken pursuant to Chapter 6.8 (commencing with Section 25300), unless one or more of the remaining responsible persons, if any, agree to assume the noncomplying responsible person's responsibilities under the agreement.

(2) The 90-day period to enter into an agreement may be extended by agreement of the department and responsible person.

(c) The covenants not to sue executed by responsible persons and the department shall be expressly conditioned upon performance of all obligations under this chapter and the enforceable agreement.

(d) If no responsible person enters into an enforceable agreement pursuant to subdivision (b), the response actions at the site shall no longer be governed by this chapter.

(e) A draft remedial action plan shall be prepared pursuant to Section 25398.6 by the responsible person. The draft remedial action plan shall be approved by the department pursuant to Section 25398.6 for each site selected. Preliminary and intermediate actions may be taken prior to the approval of a remedial action plan to ensure protection of public health and the environment.

(f) To the extent consistent with the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), the department may exclude from the hazardous waste facilities permit requirements of Section 25201, those portions of any response action selected and carried out pursuant to this chapter, that complies with all laws, rules, regulations, standards, requirements, criteria, or limitations applicable to the construction, operation, and closure of the type of facility at the site, and with any other condition imposed by the department as necessary to protect public health or the

environment. The department may enforce any federal or state law, rule, regulation, standard, requirement, criteria, or limitation with which the response action is required to comply pursuant to this subdivision.

25398.3. (a) If the department determines that an interim endangerment exists at any site after it has been selected for response action pursuant to Article 2 (commencing with Section 25396.5), the department may take those actions necessary to contain or eliminate the interim endangerment.

(b) When actions are required to be taken to immediately contain or eliminate an interim endangerment, the department shall, whenever practicable, given the risk of harm to human health and the environment, provide the potentially responsible person or persons, who have entered into an agreement pursuant to subdivision (b) of Section 25398.2, a reasonable opportunity to initiate or take over the interim endangerment response actions as soon as possible.

(c) To contain or eliminate an interim endangerment at any site undergoing remediation pursuant to this chapter, the department may take either of the following actions:

(1) Order the responsible persons to take or pay for all appropriate remedial actions necessary to contain or eliminate the interim endangerment.

(2) Take or contract for any appropriate response actions necessary to contain or eliminate the interim endangerment and if so, the provisions of Section 25358.5 shall apply with respect to response actions taken or contracted for by the department.

(d) Any person subject to an order issued pursuant to paragraph (1) of subdivision (c) who does not comply with the order without a showing of good cause shall be subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each day of noncompliance. Liability under this subdivision may be imposed in a civil action or liability may be imposed administratively pursuant to Section 25359.3.

25398.4. Any remedial action plan prepared pursuant to this chapter shall require response actions that, when fully implemented, place the site for which the plan is prepared in a condition that allows it to be permanently used for its planned use without any significant risk to human health or any significant potential for future environmental damage. To ensure that those objectives are met and permanently maintained, response actions shall be based on a site specific assessment that evaluates the potential human health risks, if any, that are posed by the hazardous substance release or threatened release at the site, the potential human health risks, if any, that may result if the site is permanently used for its planned use after response actions have been completed, and the adverse effects on the environment, if any, of the hazardous substance release. The site-specific assessment required by this section shall be carried out using standard criteria, principles, and protocols for risk assessments

adopted by the department. Those criteria, principles, and protocols shall be based on sound scientific methods, knowledge, and practice, and shall reflect criteria, principles, and protocols developed for risk assessment pursuant to Section 57003, to the extent relevant to risk assessments conducted pursuant to this chapter.

25398.5. (a) (1) To expedite the conversion of property into productive use and to provide funds for response activities, the department may approve a site owner's request to modify the boundaries of a site selected for response action under this chapter. The department may approve a site owner's request for that modification only if all of the following apply to the site:

(A) A remedial action plan has been approved by the department for the site.

(B) The holder of the first deed of trust, if any, has concurred in the modification of the boundaries of the site.

(C) The portions of the site proposed to be removed from the site by the boundary modification do not require any response action.

(D) The planned use for the portions of the site proposed to be removed from the site by the boundary modification will not result in an unacceptable risk of human exposure to hazardous substances from the site.

(E) Hazardous substances have not migrated, and are not expected to migrate, onto the portions of the site proposed to be removed from the site by the boundary modification.

(F) The modification of the boundaries of the site will not significantly interfere with response actions at the site.

(2) As a condition to approving a site owner's request to modify the boundaries of a site pursuant to paragraph (1), the department shall require that the owner, after complying with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), deposit the net proceeds of the sale, after payment of expenses necessary and appropriate to the subdivision and sale, of the portions of the site proposed to be removed from the site by the boundary modification, into a special trust account to be applied towards the cost of response actions at the site if the department determines that adequate funds may not otherwise be available to pay for all costs of response actions at the site. The department shall also require that the site owner provide the department with access to any of the portions of the site proposed to be removed from the site by a boundary modification for the purpose of taking a response action.

(b) Purchasers and their lessees of the portions of the site proposed to be removed from the site by a boundary modification approved pursuant to this section which do not require any response action under this chapter shall not acquire liability under this chapter solely based on that purchase or lease if both of the following apply:

(1) The purchaser or lessee is not affiliated with any other person liable for response costs at the site including any direct or indirect

familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the parcel is conveyed or financed or the instruments by which a lease is created.

(2) Hazardous substances have not been released from the portions of the site proposed to be removed from the site by a boundary modification subsequent to the date of the purchase or lease.

(c) The department's approval of a site owner's request to modify the boundaries of a site pursuant to this section shall not constitute a subdivision of any parcel within the boundaries of the site. Any subdivision of any parcels within the boundaries of the site shall comply with the requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code).

25398.6. (a) All remedies selected at a site subject to this chapter shall meet all of the following criteria:

(1) Be protective of human health and the environment.

(2) Provide long-term reliability at reasonable cost.

(3) Provide reasonable protection to the waters of the state, as required by the Water Code.

(4) Leave the site in a condition that allows it to be permanently used for its planned use and free of any significant risk to human health or any potential for any future significant environmental damage.

(b) A response action may achieve protection of human health and the environment by any of the following methods:

(1) Proven and effective engineering controls and appropriate land use controls to eliminate or mitigate risk at a site when utilized for its planned use.

(2) Treatment that reduces the toxicity, mobility, or volume of hazardous substances.

(3) Removal of hazardous substances.

(4) A combination of engineering and land use controls, treatment, and removal.

(5) Other methods of protection.

(c) Except as provided in subdivision (d), the department shall give no special preference to one or more available types of response action, including engineering and land use controls, treatment, removal, or other methods of protection, but shall evaluate available response action options on the individual merits of each option, or combination of options, reasonably available in light of site-specific conditions. In selecting the appropriate remedy, the department shall balance all of the following factors:

(1) The effectiveness of the remedy.

(2) The long-term reliability of the remedy.

(3) Any short-term risk to the affected community, to those engaged in the remediation effort, or to the environment.

(4) The reasonableness of the cost of the remedy.

(d) For discrete areas within a site that contain hazardous substances which are: (1) present in high concentrations or (2) are highly mobile, and for which containment cannot prevent significant risk of harm to human health or the environment from exposure to the hazardous substances, the department shall select treatment or removal, or both, as the remedial alternative or alternatives. The department may, however, select engineering and land use controls, or other methods of protection, to be implemented in combination with treatment or removal, or both, if such a combination will prevent a significant risk of harm from exposure.

(e) A remedial action plan prepared pursuant to this chapter shall include all of the following:

(1) The selection of a response action alternative or combination of alternatives described in subdivision (b) that are appropriate for the site and that satisfy the response action criteria set forth in this section.

(2) A site-specific assessment prepared for the site pursuant to Section 25398.4.

(3) A description of the characteristics of the site, including the potential for offsite migration of hazardous substances, the condition of surface or subsurface soil, and the hydrogeologic conditions.

(4) An analysis of the cost-effectiveness of the remedial action measures.

(5) An analysis of the ability to implement the remedial action measures.

(6) Consideration of the historical use of the site, background levels of hazardous substances present there due to natural conditions, and the existing and planned use of the site, in determining the extent, type, and scope of the remedy appropriate for the site.

(f) A remedial action plan prepared pursuant to this chapter shall include all of the following:

(1) A summary of the site investigation report setting forth the full extent of contamination at the site, including an assessment of potential human health risks from exposure to the hazardous substances and an assessment of environmental impacts which shall include the impact of the contamination on the planned uses of the site and the beneficial uses of water.

(2) An analysis of the long-term and short-term protection afforded by the remedial action with regard to human health and the environment.

(3) An analysis of the compliance of the remedial action with federal, state, and local statutes, regulations, and ordinances.

(g) In addition to the requirements of subdivision (a), a remedial action plan prepared pursuant to this chapter shall do all of the following:

(1) Describe all proposed remedial action measures in detail.

(2) Set forth a schedule for implementation of the plan.

(3) Set forth a plan for long-term operation and maintenance of

the remedial action measures, if any are required.

(h) Any remedial action plan approved pursuant to this section shall include a statement of reasons setting forth the basis for the remedial action selected. The statement shall include a description of each alternative evaluated and the reasons for the rejection of alternatives that were evaluated and not selected.

(i) Before approving a remedial action plan, the department shall do all of the following:

(1) Notify the public, including those persons reasonably believed to be members of the affected community, of the response action proposed in the plan in a manner that provides reasonable assurance of reaching those persons on a timely basis. The notice shall include posting notices in the area where the proposed remedial action would be taken and notification, by direct mail, of the recorded owners of property contiguous to the site addressed by the plan, as shown in the latest equalized assessment roll and all potentially responsible persons identified in the plan.

(2) Provide at least 30 days for comment by the potentially responsible persons, appropriate federal, state, and local agencies, the affected community, and other members of the Public.

(3) Hold one or more public meetings with the potentially responsible persons, the affected community, and other members of the public, if any, seeking information or desiring to comment, concerning the response action. The information provided shall include an assessment of the degree of contamination, the characteristics of the hazardous substances, an estimate of the time required to carry out the response action and a description of the proposed response action, the planned use, and the remedial objectives. The department shall give all of the parties entitled by this section to a public meeting a fair opportunity to comment on the merits of the plan.

(4) Comply with Section 25397.2.

(j) After complying with subdivision (i), the department shall review and consider any comments received at the public meeting or by other means within the specified time period, shall consider the affected community's acceptance of the proposed remedial alternative or alternatives, and shall propose revisions to the draft plan, if appropriate.

(k) When reviewing a remedial action plan, the department shall give no special preferences to one or more available types of response action, including engineering and land use controls, treatment, removal, or other types of corrective action, but shall evaluate available response action options on the individual merits of each option reasonably available in light of specific site conditions.

(*l*) Within 60 days after the close of the comment period set forth in paragraph (2) of subdivision (i), the department shall approve the final remedial action plan, or issue a notice of deficiency to the person who submitted the plan that describes, in detail, any deficiencies in the plan. A remedial action plan found to be deficient

shall be modified in a reasonable time. However, any notice of rejection of the notice of deficiency shall be filed with the department within 30 days from the date of receipt of the notice of deficiency. Within 60 days of receiving a modified plan, the department shall approve the plan or advise the person who prepared the plan, in detail, of the new or continuing deficiencies. Any failure to act by the department as provided in this subdivision may be appealed to the secretary. If the secretary fails to act on behalf of the department within 30 days after the appeal is filed, the department's failure to act may be challenged by any responsible person for the site pursuant to the provisions of Section 1085 of the Code of Civil Procedure.

(m) Once approved by the department, a draft plan shall become final 60 days from the date that notice of its approval is provided in writing by appropriate means, as provided in subdivision (b) of Section 25398.10, unless a petition for review is filed prior to that time pursuant to Section 25398.10.

(n) A remedial action plan is not required for the abatement of an interim endangerment pursuant to Section 25398.2.

(o) Nothing in this chapter shall be construed to change the standards for response actions taken at voluntary action sites that are overseen by the department pursuant to Section 25201.9 or any other authority.

25398.7. (a) A remedial action plan may utilize land use controls to limit or restrict land use where appropriate. All land use controls shall be recorded by the site owner in the county in which the site is located. The site owner shall provide the department with a copy of the land use controls which have been appropriately recorded.

(b) Any person who violates the terms of a land use control which that person knew, or reasonably should have known, applied to the property, shall be subject to a civil penalty not to exceed twenty-five thousand dollars ($25,000) per day for each day of violation.

(c) The terms and conditions of a land use control may be modified only with the express written consent of the department, based on a determination that the response actions implemented at the site provide sufficient protection of human health and the environment required by subdivision (a) of Section 25398.6, and are sufficient to permit the planned use of the site. If additional response action is required to provide that protection, the department shall not approve the request for modification of the restriction or control until completion of the additional response action. Implementation of a modification to a land use control shall be in accordance with the following procedure:

(1) The person requesting the modification to the permitted use of the site shall provide the request in writing to the department for the site to approve a modification to an existing land use control. The request shall be accompanied by supporting documentation demonstrating that the response action implemented at the site provides the required protection. The request shall be accompanied

by any applicable costs.

(2) Within 120 days of receiving the request, and after a public notice is placed in a newspaper of general circulation in the affected area, and after a 30-day public comment period, a duly noticed public meeting shall be held on the merits of the request, the department shall do one of the following:

(A) Approve the proposed modification.

(B) Approve the proposed modification with conditions for implementation of additional response action.

(C) Disapprove the proposed modification and provide the owner with the reasons for that disapproval.

(3) (A) The approval or denial of a request for modification shall become final within 30 days from the date that the department acts to approve or deny the modification and provides notice to all persons required to receive notice pursuant to, and in the manner required by, paragraph (2). Within 30 days from the date that any decision to approve a request for modification becomes final, the site owner shall record the modified land use control in the county in which the site is located and provide the department with a copy of the land use control which has been endorsed by the county recorder. The approved modification shall take effect upon recordation and after notice of the final decision is given in writing, by appropriate means, to immediately adjacent property owners, commenters, and persons who attended the public meeting and requested this notice.

(B) If the approval is accompanied with conditions which require compliance prior to modification of the land use control, the site owner shall provide the department with a copy of the land use control which has been appropriately recorded within 30 days after the department has notified the site owner that compliance with those conditions has been demonstrated. The approved modification shall take effect upon recordation.

25398.8 (a) At the same time that the department gives notice of the approval of the remedial action plan for a site, or prior to the time that the department issues its first notice of deficiency regarding the remedial action plan, the department shall, based on all available information before the department at that time, do both of the following:

(1) Notify, in writing, and by appropriate means, all of the responsible persons, the affected community, and the public, of the department's proposed apportionment of liability for the costs of response for the site which is the subject of the remedial action plan.

(2) Indicate in the notice whether there are orphan shares that will, or may be, paid from the trust fund.

(b) The department shall apportion liability for the response actions taken pursuant to this chapter to each responsible person for that person's share of response costs, based upon equitable factors and fairness principles so that total shares, including orphan shares, if any, total 100 percent. The fund administrator shall represent any

orphan share with respect to actions concerning apportionment of liability if there is a proposed apportionment of liability to the orphan share for payment from the trust fund. The department shall provide any person who has requested notification of the department's proposed apportionment of liability with a copy of the proposed apportionment within 10 days after the department completes its proposal for apportionment of liability.

(c) The department shall weigh each factor considered appropriate under the circumstances of the release for which the remedial action was initiated. The department shall emphasize timely apportionment of approximate shares of liability and is not required to precisely determine all relevant factors, as long as substantial justice among the parties is achieved. Equitable factors that shall guide the apportionment decision include, but are not limited to, all of the following:

(1) The amount of hazardous substance for which each person is responsible.

(2) The degree of toxicity of the hazardous substance, its contribution to the contamination at the site, and the total expense involved in the remediation effort attributable to the hazardous substances for which each person is responsible.

(3) The degree of involvement of the person in the generation, transportation, treatment, or disposal of the hazardous substance for which each person is responsible.

(4) The degree of care exercised by the responsible person with respect to the hazardous substances for which each person is responsible, taking into account the characteristics of the substance.

(5) The degree of cooperation by the responsible person with federal, state, and local officials to prevent harm to human health and the environment.

(d) The site owner shall pay for all additional costs of response actions performed pursuant to this chapter at the request of the site owner that exceed the costs that would be incurred if the response action were limited to those required by this chapter.

(e) The apportionment of liability pursuant to this section shall not be subject to judicial review, except as provided in Section 25398.10.

(f) Notwithstanding the requirements of subdivisions (a) to (d), inclusive, the potentially responsible persons may agree upon an allocation of liability among themselves at a particular site, that, in the absence of an allocation of liability to an orphan share for payment from the trust fund, shall be adopted by the department as the apportionment of liability for the site.

25398.9. (a) Prior to the date that the department apportions liability pursuant to Section 25398.8, the department shall, when it determines that it is in the best interests of the public, propose a final administrative or judicial expedited settlement with responsible persons who, in the judgment of the department, meet either of the following conditions for eligibility for such an expedited settlement:

(1) The responsible person's individual contribution of hazardous substances at the site is de minimis. The contribution of hazardous substance to a site by a responsible person is de minimis if both of the following apply:

(A) The responsible person's volumetric contribution of materials containing hazardous substances is minimal in comparison to the total volumetric contributions of materials containing hazardous substances at the site, and that individual contribution is presumed to be minimal if it is 1 percent or less of the total volumetric contribution at the site, unless the department identifies a lower threshold based on site-specific factors.

(B) The responsible person's contribution of materials containing hazardous substances does not present toxic or other hazardous effects that are significantly greater than those of other hazardous substances at the site.

(2) (A) The responsible person is the site owner, did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the site, and did not contribute to the release or threat of release of a hazardous substance at the site through any action or omission.

(B) Paragraph (A) does not apply if the responsible person purchased the site with actual or constructive knowledge that the site was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

(b) The department may reach an expedited settlement with responsible persons only when the aggregate shares of liability determined pursuant to subdivision (a) do not exceed 10 percent of the projected cost of the response action at the site.

(c) Any person who enters into a settlement pursuant to this section shall provide any information relevant to the administration of this chapter which is requested by the department. The determination of whether a person is eligible for an expedited settlement shall be made on the basis of all information available to the department at the time the determination is made. If the department determines not to apply the provisions of this section at a site, the basis for that determination shall be explained in writing to any person who requests such a settlement.

(d) A responsible person who has reached a final settlement under this section and paid any response costs which are part of the settlement, is not liable for claims for contribution from any other party for the costs of the response action at the site.

(e) At the same time that notice is provided pursuant to subdivision (a) of Section 25398.8, the department shall provide written notice of the proposed settlement to all other responsible persons, the affected community, and the public by appropriate means. The notice shall identify the site and the parties to the proposed settlement.

(f) The department shall consider any written comments submitted regarding the proposed expedited settlement in

determining whether or not to consent to the proposed settlement. The department may withhold consent to the proposed settlement if the comments disclose factors or considerations that indicate the proposed settlement is inappropriate, improper, or inadequate. The department shall withhold consent to the proposed settlement if any responsible person for the site petitions the department to invoke an arbitration panel to evaluate the merits of the settlement before the settlement agreement becomes final.

25398.10. (a) The Director of Environmental Health Hazard Assessment shall convene an arbitration panel, if a timely petition is filed with the director, for purposes of resolving all disputes with any responsible person concerning any of the following:

(1) The remedial action plan developed pursuant to Section 25398.6, including disputes regarding remedy selection, other technical issues, conditions of approval, or any other element of the plan.

(2) The department's proposed apportionment of liability pursuant to Section 25398.8.

(3) Any proposed de minimis settlements pursuant to Section 25398.9.

(4) The department's approval or denial of a change in land use pursuant to Section 25398.7.

(5) The department's approval or denial of a certificate of completion pursuant to Section 25398.15, as provided in subdivision (b) of Section 25398.15.

(b) (1) Petitions for disputes concerning the matters specified in paragraphs (1) to (3), inclusive, of subdivision (a) shall be filed within 60 days from the date that the notice of approval of the remedial action plan is issued, or from the date that the responsible person or persons preparing the remedial action plan notify the department in writing, by appropriate means, of the responsible person or person's rejection of a notice of deficiency. Within 10 days of the department's approval of the remedial action plan or receipt of a notice of a rejection of a notice of deficiency for the remedial action plan, the department shall provide notice in writing, by appropriate means, of its approval, or receipt of the notice of rejection, to all responsible persons for the site and to the public. The notice shall indicate the rights of the parties to file petitions for arbitration of the disputes concerning the matters specified in paragraphs (1) to (3), inclusive, of subdivision (a) and the deadline for the filing of a petition. Petitions for arbitration of disputes concerning the matters specified in paragraphs (1) to (3), inclusive, of subdivision (a) may be made by any responsible person. Petitions for arbitration of disputes concerning the matter specified in paragraph (1) of subdivision (a) may also be filed by the affected community, and petitions for arbitration of disputes concerning the matters specified in paragraphs (2) and (3) of subdivision (a) may be filed by any member of the public if orphan shares that are to be paid from the trust fund are at issue.

(2) Petitions for the arbitration of all disputes concerning the matters specified in paragraphs (4) and (5) of subdivision (a) may be made by any responsible person for the site, the affected community, or the public, and shall be made prior to the time that the action in dispute becomes final.

(3) Prior to submitting a petition for arbitration, the responsible persons shall make all reasonable efforts to resolve the dispute.

(4) If one or more petitions for arbitration have been filed for any combination of review of the remedial action plan, apportionment of liability, or de minimis settlements, the arbitration panel shall review all of these petitions in a consolidated hearing. The arbitration panel shall minimize the need for hearings on all other issues by consolidating hearings in all cases where reasonably possible.

(5) The arbitrators shall be selected as provided in subdivision (d) of Section 25356.2.

(c) All the provisions of Sections 25356.2, 25356.3, 25356.4 and 25356.6 apply to arbitration proceedings conducted pursuant to this section, except for all of the following:

(1) The arbitration panel shall apply the factors and standards for liability apportionment set forth in subdivision (c) of Section 25398.8, instead of those set forth in subdivision (c) of Section 25356.2.

(2) The provisions of subdivision (a) of Section 25356.3 and the provisions of subdivisions (c) and (e) of Section 25356.4 shall not apply.

(3) The arbitrators shall be bound by, and shall apply, the requirements and standards set forth in this chapter and Chapter 6.65 (commencing with Section 25260) that are applicable to the dispute that is the subject of the arbitration.

(4) The arbitrators shall have the expertise and experience appropriate to understand and critically evaluate the issues to be arbitrated.

(d) The arbitration panel shall hold a public hearing on any matter presented to the panel for evaluation, shall take all evidence presented, shall keep a record of the proceedings, including all testimony and evidence presented, and shall have discretion in the determination of facts. All findings and decisions of the panel shall be supported by substantial evidence in light of the whole record. The response action for which the arbitration panel has been requested to act pursuant to this section shall not be stayed during the pendency of the arbitration proceedings. Notice of the arbitration panel's decision shall be provided in writing, by appropriate means, within five days from the date that the arbitration panel has reached a decision, to the responsible persons, the affected community, the public, and any other person or entity who participated in the arbitration proceeding and requested notice of the decision.

(e) The department, any member of the advisory committee described in Section 25263, or, for purposes of appealing the approval of a remedial action plan by the arbitration panel, any member of the

affected community, may seek judicial review of a decision of the arbitration panel by filing a petition for a writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure not more than 30 days from the date that notice of the decision is provided in writing by appropriate means to those entities or persons. Any person authorized to petition for arbitration may also seek judicial review of a decision of the arbitration panel concerning any matter for which the person is authorized pursuant to subdivision (b) to submit a petition for arbitration, by filing a petition for writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure not more than 30 days from the date that notice of the decision is provided in writing by appropriate means to that person. No person may seek judicial review of a matter that is subject to arbitration, if requested, that has not been first presented to an arbitration panel.

(f) Except for acts of recklessness, gross negligence, fraud, deceit, or other criminal activity, the arbitrators are immune from liability for any actions taken in their role as arbitrators.

25398.11. (a) (1) The secretary shall ensure that all arbitration panels are provided with the necessary technical support services by a team of state employees with experience and expertise appropriate to the issue or issues in dispute, including, but not limited to, where necessary, expertise in hydrogeology, geology, chemical engineering, toxicology, hazardous substance response action law, soil science, environmental health and engineering, industrial hygiene, and other related disciplines. The team of state employees shall provide a written report to the panel setting forth the team recommendations on all technical issues before the arbitrators, and the arbitrators shall give substantial weight to the team's recommendations. The team's report shall be a public record.

(2) The Director of Environmental Health Hazard Assessment shall adopt procedures for the removal of arbitrators from panels for inadequate performance of their assigned responsibilities.

(b) (1) The department shall notify all responsible persons who have been identified and located, the affected community, the team of state employees, and the public, of the arbitration hearing request and the location and scheduling of the arbitration hearing, in writing, by appropriate means, as soon as reasonably practicable after an arbitration hearing is requested.

(2) All responsible persons for the site notified by the department of the arbitration shall be subject to arbitration by the arbitration panel, and all response costs shall be apportioned among all responsible persons notified of the arbitration proceedings regardless of whether those persons appear before the arbitration panel.

25398.12. (a) No person may serve as an arbitrator for a site for which that person has a conflict of interest. A conflict of interest, for purposes of this section, includes the following:

(1) Employment at any time in the past by one or more of the responsible persons for the site.

(2) Existence of a potentially material financial impact from one or more of the decisions the arbitrator may be asked to make involving the site.

(b) Any person may challenge the selection of any arbitrator on grounds of (1) conflict of interest, or (2) lack of one or more of the qualifications required by Section 25398.10. Any challenge shall be filed with the Director of Environmental Health Hazard Assessment within 10 days of the provision of public notice of the arbitration hearing pursuant to paragraph (1) of subdivision (b) of Section 25398.11. The Director of Environmental Health Hazard Assessment shall, within 20 days thereafter, determine the arbitrator's fitness to serve. Any arbitrator that is disqualified from serving on a particular panel shall be replaced in a timely manner in the same manner as the disqualified arbitrator was chosen.

25398.13. All decisions of the arbitration panel shall be made by majority vote.

25398.14. Upon completion of an engineering design to implement an approved remedial action plan, the responsible persons for the site shall submit the design to the department for approval. The department shall approve, modify, or deny the design within 60 days from the date of receipt.

25398.15. (a) Upon completion of a response action pursuant to a remedial action plan, the responsible person shall file a request with the department for a certificate of completion. A request for certificate of completion may be filed even though long-term operation and maintenance requirements and other long-term remedial activities remain an ongoing obligation, if all other final response actions have been completed.

(b) The department shall review each request for a certificate of completion and shall approve the request if the department determines that the response action plan and any other directive of the department have been satisfactorily completed and that the site has been placed into a condition that allows it to be permanently used for its planned use without any significant risk to human health or potential for any future significant environmental damage. The department shall approve or deny the request for a certificate of completion within 90 days after it is filed with the department. Any failure of the department to act on the submittal of a request for a certificate of completion within the time periods provided in this section may be appealed to the secretary. If the secretary fails to act on behalf of the department within 30 days after the appeal is filed, the department's failure to act may be challenged by any responsible person for the site pursuant to the provisions of Section 1085 of the Code of Civil Procedure. Any person who disputes the approval or denial of a request for a certificate of completion may, before the approval or denial becomes final pursuant to subdivision (c), file a petition for review of that denial pursuant to Section 25398.10 except that the petition may request review only concerning those issues in dispute that were heard before an arbitration panel in a prior hearing

concerning the remedial action plan. All other disputes concerning the approval or denial of a request for a certificate of completion may be resolved by the secretary, at the discretion of the secretary.

(c) Notice of any approval or denial of a request for a certificate of completion shall be provided to the responsible persons for the site and to the public, by appropriate means, within five days from the date that the decision is made by the department. The approval or denial shall become final within 30 days from the date that notice is provided pursuant to this subdivision, unless a review of that approval or denial is requested, pursuant to subdivision (b), before the expiration of that 30-day period.

(d) A certificate of completion that becomes final pursuant to this section shall be deemed to have been issued pursuant to Section 25264, and Sections 25264 and 25265 shall apply to the site.

Article 5. Inspection, Security, and Damages

25398.16. The department shall have the same authority with regard to a remedial action site selected for response pursuant to this chapter as the authority provided in Sections 25358.1 and 25359.5 and all potentially responsible persons are entitled to the trade secret protection set forth in Section 25358.2 with regard to any action taken by the department pursuant to this chapter.

25398.17. (a) A responsible person who has entered into an agreement with the department, and is in compliance with the terms of that agreement and who is in compliance with all orders issued by the department, may seek, in addition to contribution, treble damages from any responsible person who has failed or refused to comply with any order or agreement relating to a site selected for response action under this chapter, was named in the order or agreement, and is subject to contribution. A responsible person from whom treble damages is sought in a contribution action shall not be assessed treble damages by any court where the responsible person, for sufficient cause, as determined by the court, failed to comply with an agreement or with an order issued by the department, or where the principles of fundamental fairness will be violated, as determined by the court. A responsible person seeking treble damages pursuant to this section shall show that notice of the order or agreement was provided to the responsible person against whom treble damages are being sought.

(b) One-half of any treble damages awarded pursuant to this section shall be paid to the department for deposit in the trust fund. Nothing in this subdivision affects the rights of any party to seek contribution pursuant to any other statute or under common law.

(c) If treble damages are assessed against any person pursuant to this section, that person shall be deemed to have acted willfully with respect to the conduct that gave rise to this liability for purposes of Section 533 of the Insurance Code.

Article 6. Recovery Actions

25399. (a) A responsible person is liable to the department and the trust fund for the response costs as provided in the agreement entered into pursuant to Section 25398.2, and for any other response costs incurred by the state, which are allocated to the responsible person in a final liability apportionment decision by the department pursuant to Section 25398.8 or the final decision of an arbitration panel pursuant to Section 25398.10 and which have been paid, or assigned for payment, from the trust fund.

(b) Actions to recover any response costs incurred by the state shall be commenced by the Attorney General, upon the request of the department or the fund administrator, against the responsible person or persons.

(c) The department and the fund administrator shall only seek response costs in an action pursuant to paragraph (b) from those responsible persons who have not paid their apportioned share of response costs to the department, or who have otherwise failed to comply with this chapter or any regulation, agreement, or order adopted pursuant to this chapter.

(d) Any person who has incurred response costs in accordance with this chapter may seek contribution or indemnity from any person who is liable pursuant to this chapter, except that no claim may be asserted against a person whose liability has been determined and which has been or is being fully discharged pursuant to this chapter, or against a person who has executed an agreement with the department pursuant to Section 25398.2, and is in compliance with this chapter and any regulation, agreement, or order adopted pursuant to this chapter. An action to enforce a claim may be brought as a cross-complaint by a defendant in an action brought pursuant to this section, or in a separate action for contribution or indemnity after the plaintiff has paid the department for response costs in accordance with this chapter. Any plaintiff or cross-complainant seeking contribution or indemnity shall give written notice to the department upon filing an action or cross-complaint under this section. In resolving claims for contribution or indemnity, the court shall allocate costs among liable parties, including the orphan shares, as set forth in the department's final liability apportionment decision or an arbitration panel decision pursuant to this chapter, except in instances where responsible parties have agreed to pay for orphan shares pursuant to the agreement provided for in Section 25398.2.

(e) (1) An action under this section for the recovery of response costs shall be commenced within three years after a certificate of completion is issued pursuant to Section 25398.15 or, in cases where responsible persons are identified by the department after that three-year period, within three years after the responsible persons are identified.

(2) A subsequent action or actions under this section for further response costs may be maintained at any time during the response

action, but shall be commenced no later than three years after the date of completion of all response action.

Article 7. Office of Trust Fund Administrator

25399.1. (a) The Expedited Site Remediation Trust Fund is hereby created in the State Treasury and the money in the trust fund may be expended by the department, upon appropriation by the Legislature, to carry out this chapter.

(b) All expenses that are incurred by the state pursuant to this chapter shall be paid solely by the responsible parties or the trust fund. No liability or obligation is imposed upon the state pursuant to this chapter, and the state shall not incur a liability or obligation beyond the extent to which money is provided by the responsible parties or the trust fund for the purposes of this chapter.

25399.2. (a) A fund administrator shall be designated by the Governor.

(b) The fund administrator shall prudently administer the trust fund and shall protect the trust fund against unreasonable assessments of liability to the orphan share in all liability apportionment actions under this chapter where funding for all or a part of an orphan share is sought from the trust fund. The fund administrator shall have the same authority as a responsible person specified in this chapter with regard to a site where the orphan share is to be funded in whole, or in part, from the trust fund.

SEC. 3. (a) The Department of Toxic Substances Control, the Office of Environmental Health Hazard Assessment, and the California Environmental Protection Agency may adopt regulations necessary to implement Section 25344 of the Health and Safety Code and Chapter 6.85 (commencing with Section 25396) of Division 20 of the Health and Safety Code, as added by Section 3 of this act.

(b) (1) Any regulations adopted pursuant to this section, which are filed with the Office of Administrative Law on or before June 30, 1995, shall be deemed to be emergency regulations necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(2) If the Department of Toxic Substances Control, the Office of Environmental Health Hazard Assessment, or the California Environmental Protection Agency adopts emergency regulations pursuant to this subdivision, the emergency regulations, the rulemaking file, and the certification of compliance required by subdivision (e) of Section 11346.1 of the Government Code shall be transmitted to the Office of Administrative Law within 180 days of filing with the Secretary of State. The emergency regulations shall be deemed repealed, and shall not be in effect, if the certification of compliance required by Section 11346.1 of the Government Code is not transmitted to the Office of Administrative Law within that 180-day period.

SEC. 4. The Department of Toxic Substances Control shall report

annually to the Governor and the Legislature on its progress in implementing the pilot program established by Chapter 6.85 (commencing with Section 25396) of Division 20 of the Health and Safety Code, as added by Section 2 of this act. The report shall describe the activities which the department has taken during the past year in implementing the pilot program, list the sites that have been selected for response action and the sites that have been issued a certificate of completion under the program, evaluate its effectiveness in expediting the cleanup of selected sites, compare its effectiveness with that of the voluntary cleanup "walk-in" program that the department administers pursuant to Chapter 6.5 (commencing with Section 25100) of, and Chapter 6.8 (commencing with Section 25300) of, Division 20 of the Health and Safety Code, and make recommendations concerning the administration of the pilot program.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 436

An act to amend Sections 42002 and 42010 of the Public Resources Code, relating to solid waste.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 42002 of the Public Resources Code is amended to read:

42002. The following definitions govern the construction of this chapter:

(a) "Applicant" means a person, as defined in Section 40170, who applies for designation as a Recycling Market Development Zone.

(b) "Postconsumer waste material" means any product generated by a business or a consumer which has served its intended end use, and which has been separated from solid waste for the purposes of collection, recycling, and disposal, and which does not include secondary waste material.

(c) "Recycling-based business" means any business that increases market demand for, or adds value to, postconsumer waste material or secondary waste material.

(d) "Recycling market development zone" or "zone" means any single or joint, contiguous parcels of property that, based on the determination of the board, meets the following criteria:

(1) The area has been zoned an appropriate land use for the development of commercial, industrial, or manufacturing purposes.

(2) The area is identified in the countywide or regional agency integrated waste management plan as part of the market development area.

(3) The area is located in a city with an existing postconsumer waste collection infrastructure.

(4) The area may be used to establish commercial, manufacturing, or industrial processes which would produce end products that consist of not less than 50 percent recycled materials.

(e) "Revolving loan program" means the Recycling Market Development Revolving Loan Program established pursuant to Section 42010.

(f) "Secondary waste material" means industrial byproducts which would otherwise go to disposal facilities and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes, such as home scrap and mill broke.

(g) "Subaccount" means the Recycling Market Development Revolving Loan Subaccount created pursuant to paragraph (1) of subdivision (c) of Section 42010.

SEC. 2. Section 42010 of the Public Resources Code is amended to read:

42010. (a) The local governing body may, either by ordinance or resolution, upon the recommendation of the appropriate land use planning agency, propose eligible parcels of property within its jurisdiction as a recycling market development zone.

(b) The proposal of a recycling market development zone shall be based upon the following findings by the local governing body:

(1) The current waste management practices and conditions are favorable to the development of postconsumer waste material markets.

(2) The designation as a recycling market development zone is necessary in order to assist in attracting private sector recycling investments to the area.

(c) (1) The Recycling Market Development Revolving Loan Subaccount is hereby created in the account for the purpose of providing loans for purposes of the Recycling Market Development Revolving Loan Program established pursuant to this article. The money from any loan repayments and fees, including, but not limited to, principal and interest repayments, fees and points, recovery of collection costs, income earned on any asset recovered pursuant to a loan default, and funds collected through foreclosure actions, shall be deposited in the subaccount.

(2) Upon appropriation by the Legislature in the annual Budget Act, the board may make low-interest loans to local governing bodies

and private business entities within a recycling market development zone from money in the subaccount for the purpose of assisting the board and local agencies in complying with Section 40051 and to assist cities and counties in complying with Section 41780.

(3) The board shall establish and collect fees for applications for loans authorized by this section. The application fee shall be set at a level that is sufficient to fund the board's cost of processing applications for loans. In addition, the board shall establish a schedule of fees, or points, for loans which are entered into by the board, to fund the board's administration of the revolving loan program.

(4) The board may, upon appropriation by the Legislature in the annual Budget Act, use the money in the subaccount for the administration of the revolving loan program. In addition, the board may fund administration of the revolving loan program from the account upon appropriation by the Legislature in the annual Budget Act. However, funding for the administration of the revolving loan program from the account shall be provided only if there are not sufficient funds in the subaccount to fully fund administration of the program.

(d) Loans made pursuant to subdivision (c) shall be subject to all of the following requirements:

(1) The terms of any approved loan shall be specified in a loan agreement between the borrower and the board. The loan agreement shall include a requirement that the failure to comply with the agreement shall result in any remaining unpaid amount of the loan, with accrued interest, being immediately due and payable. Notwithstanding any term of the agreement, any recipient of a loan that the board approves shall repay the principal amount, plus interest on the basis of the rate of return for money in the Pooled Money Investment Account. Except as provided in subdivision (g), all money received as repayment and interest on loans made pursuant to this section shall be deposited in the subaccount.

(2) The term of any loan made pursuant to this section shall be not more than 10 years.

(3) The board shall approve only those loan applications which demonstrate the applicant's ability to repay the loan. The highest priority for funding shall be given to projects which demonstrate that the project will increase market demand for recycling the project's type of postconsumer waste material.

(4) The board shall finance not more than one-half of the cost of the project, or not more than one million dollars ($1,000,000) for loans to the project, whichever is less.

(5) The Department of Finance may audit the expenditure of the proceeds of any loan made pursuant to this section.

(e) Upon authorization by the Legislature in the annual Budget Act, the Controller shall transfer the sum of five million dollars ($5,000,000) from the account to the subaccount for the purpose of making loans pursuant to this section. That amount shall be a loan to the subaccount, repayable with interest to the account at the rate of

return for money in the Pooled Money Investment Account, and shall be repaid on or before July 1, 1997.

(f) As part of the annual report which the board is required to submit on or before March 31, 1996, to the Legislature pursuant to Section 40507, the board shall submit a report on the revolving loan program .

(g) (1) This section shall become inoperative on July 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) Notwithstanding paragraph (1), any loan that is outstanding on July 1, 1997, shall be repaid as provided in paragraph (2) of subdivision (d) until repaid in full. Any unexpended funds in the subaccount on July 1, 1997, shall be transferred to the account, and any proceeds from loans outstanding on that date shall be deposited in the account.

CHAPTER 437

An act to amend Section 15202 of the Government Code, and to amend Section 4 of Chapter 1649 of the Statutes of 1990, relating to trial costs.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. This act shall be known and may be cited as the Hauser-Leslie Criminal Justice Act.

SEC. 2. Section 15202 of the Government Code, as amended by Section 1 of Chapter 1649 of the Statutes of 1990, is amended to read:

15202. (a) A county with a population of 300,000 or less, at the time of the 1980 decennial census, which is responsible for the cost of a trial or trials or any hearing of a person for the offense of homicide may apply to the Controller for reimbursement of 90 percent of the costs incurred by the county for each such trial or hearing, without regard to fiscal years, in excess of the amount of money derived by the county from a tax of 0.00625 of 1 percent of the full value of property assessed for purposes of taxation within the county.

(b) (1) A county with a population of 200,000 or less, as of January 1, 1990, which is responsible for the cost of two or more trials or hearings within a fiscal year of a person or persons for the offense of homicide may apply to the Controller for reimbursement of 90 percent of the costs incurred in a fiscal year by the county for the conduct of the first trial within a fiscal year, and 85 percent of the costs incurred in a fiscal year by the county for the conduct of any

and all subsequent trials or hearings in excess of the amount of money derived by the county from a tax of 0.00625 of 1 percent of the full value of property assessed for purposes of taxation within the county.

(2) A county with a population of 200,000 or less, as of January 1, 1990, which, within a fiscal year, is reimbursed for costs incurred by the county for the conduct of only one trial or hearing pursuant to subdivision (a) shall be reimbursed for that one trial or hearing in subsequent fiscal years for costs incurred in those subsequent fiscal years without again being required to expend county funds equal to 0.00625 of 1 percent of the full value of property assessed for purposes of taxation within the county, so long as all reimbursements to the county under this paragraph are for only that one trial or hearing.

For purposes of this subdivision, in determining the costs of a homicide trial, trials, hearing, or hearings, the costs shall include, all pretrial, trial, and posttrial costs incurred in connection with the investigation, prosecution, and defense of a homicide case or cases within a fiscal year, including, but not limited to, the costs incurred by the district attorney, sheriff, public defender, and witnesses, which were reasonably required by the court and participants in the case or cases, and other extraordinary costs associated with the investigation in homicide cases.

(c) A county with a population exceeding 300,000 at the time of the 1980 decennial census which is responsible for the cost of a trial or trials or any hearing of a person for the offense of homicide may apply to the Controller for reimbursement of 80 percent of the costs incurred by the county in excess of the amount of money derived by the county from a tax of 0.00625 of 1 percent, and not in excess of the amount of money derived from a tax of 0.0125 of 1 percent, and for reimbursement of 100 percent of the costs incurred in excess of the amount of money derived from a tax of 0.0125 percent, of the full value of property assessed for purposes of taxation within the county.

(d) The Controller shall not reimburse any county for costs that exceed the standards for travel and per diem expenses set forth in Sections 700 to 715, inclusive, and Section 718 of Title 2 of the California Code of Regulations. The Controller may reimburse extraordinary costs in unusual cases if the county provides sufficient justification of the need for these expenditures. Nothing in this section shall permit the reimbursement of costs for travel in excess of 1,000 miles on any single round trip, without the prior approval of the Attorney General.

(e) The Legislature recognizes that the conduct of trials for persons accused of homicide should not be hampered or delayed because of a lack of funds available to the counties for that purpose. While this section is intended to provide an equitable basis for determining the allocation to the state of the costs of homicide trials in any particular county, the rising costs of those trials necessitate an objective study to assure reasonable financial restraints and incentives for cost-effectiveness that do not place an unreasonable burden on the treasury of the smaller counties.

This section shall remain operative only until January 1, 2000, and as of that date is repealed.

SEC. 3. Section 15202 of the Government Code, as amended by Section 2 of Chapter 1649 of the Statutes of 1990, is amended to read:

15202. A county which is responsible for the cost of a trial or trials or any hearing of a person for the offense of homicide may apply to the Controller for reimbursement of the costs incurred by the county in excess of the amount of money derived by the county from a tax of 0.0125 of 1 percent of the full value of property assessed for purposes of taxation within the county.

The Controller shall not reimburse any county for costs that exceed the State Board of Control's standards for travel and per diem expenses. The Controller may reimburse extraordinary costs in unusual cases if the county provides sufficient justification of the need for these expenditures. Nothing in this section shall permit the reimbursement of costs for travel in excess of 1,000 miles on any single round trip, without the prior approval of the Attorney General.

This section shall become operative on January 1, 2000.

SEC. 4. Section 4 of Chapter 1649 of the Statutes of 1990 is amended to read:

Sec. 4. The Legislature finds and declares that under existing law, including, but not limited to, Sections 11019.6 and 15202 of the Government Code, the County of Calaveras will not be reimbursed for the extraordinary expenses related to the homicide trial of Charles Chitat Ng which will cause a severe drain on its cash-flow. Therefore, notwithstanding any other provision of law, the County of Calveras may apply to the Controller for reimbursement of 100 percent of its costs incident to the homicide trial of Charles Chitat Ng, incurred between January 1, 1991, and January 1, 2000. Nothing in this section shall permit the reimbursement of costs for travel in excess of 1,000 miles on any single round trip, without the prior approval of the Attorney General.

CHAPTER 438

An act to add Section 21096 to the Public Resources Code, relating to environmental quality.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 21096 is added to the Public Resources Code, to read:

21096. (a) If a lead agency prepares an environmental impact report for a project situated within airport comprehensive land use

plan boundaries, or, if a comprehensive land use plan has not been adopted, for a project within two nautical miles of a public airport or public use airport, the Airport Land Use Planning Handbook published by the Division of Aeronautics of the Department of Transportation, in compliance with Section 21674.5 of the Public Utilities Code and other documents, shall be utilized as technical resources to assist in the preparation of the environmental impact report as the report relates to airport-related safety hazards and noise problems.

(b) A lead agency shall not adopt a negative declaration for a project described in subdivision (a) unless the lead agency considers whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 439

An act to amend Sections 8561, 8568, 8569, 8573, 8575, 8576, and 8577 of, and to repeal Sections 8560, 8568.5, 8570, 8578, and 8583 of, the Fish and Game Code, relating to commercial fishing, and making an appropriation therefor.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 8560 of the Fish and Game Code is repealed.

SEC. 2. Section 8561 of the Fish and Game Code is amended to read:

8561. (a) Notwithstanding Sections 8394 and 8603, shark and swordfish may not be taken for commercial purposes with drift gill nets except under a revocable drift gill net shark and swordfish permit issued annually by the department. These permits shall be revoked or suspended by the director upon a conviction for a willful violation of any provision of this article, Article 1 (commencing with Section 8601) or Article 5 (commencing with Section 8680) of Chapter 3, or violation of any condition of the permit by the permittee or the permittee's agent, servant, employee, or person acting under the permittee's direction or control.

(b) A drift gill net shark and swordfish permit shall not be required for the taking of sharks with drift gill nets with a mesh size smaller than eight inches in stretched mesh and twine size no. 18 or the equivalent of this twine size or smaller.

SEC. 3. Section 8568 of the Fish and Game Code is amended to read:

8568. Drift gill net shark and swordfish permits shall be issued to any prior permittee who possesses a valid drift gill net shark and swordfish permit issued pursuant to this section or to any experimental swordfish permittee who possessed a valid 1994–95 limited entry experimental swordfish permit issued pursuant to Section 8586.2, as it read on January 1, 1994, but only if the permittee meets all of the following requirements:

(a) Possesses a valid permit for the use of gill nets authorized pursuant to Section 8681.

(b) Possessed a valid drift gill net shark and swordfish permit or a valid limited entry experimental swordfish permit during the preceding season and that permit was not subsequently revoked.

(c) During one of the two immediately preceding permit years, either landed at least 2,500 pounds of swordfish or 1,000 pounds of shark or landed shark or swordfish for which the permittee was paid at least one thousand dollars ($1,000). Landings shall be verified by the applicant's submission of landing receipts as provided in Section 8043.

SEC. 4. Section 8568.5 of the Fish and Game Code is repealed.

SEC. 5. Section 8569 of the Fish and Game Code is amended to read:

8569. (a) Any person who possessed a valid drift gill net shark and swordfish permit or a valid limited entry experimental swordfish permit during the preceding season and whose application has been denied because the permittee failed to meet the landing requirements specified in subdivision (c) of Section 8568, may appeal to the commission, submitting circumstances surrounding nonuse of the permit and request a waiver of the landing requirement. The commission may authorize issuance of the permit to the applicant if it finds the nonuse of the permit during the preceding season was for reasons beyond the control of the applicant under the circumstances.

(b) The commission may establish conditions for the issuance of a permit if the person's drift gill net shark and swordfish permit or limited entry experimental swordfish permit was revoked during a preceding season or if the person possessed a valid permit during the preceding season but did not apply for renewal of his or her permit on or before April 30. The applicant for a permit under this subdivision may appeal to the director for the issuance of the permit under those conditions.

SEC. 6. Section 8570 of the Fish and Game Code is repealed.

SEC. 7. Section 8573 of the Fish and Game Code is amended to read:

8573. Drift gill nets may be used to take shark and swordfish

under the permit provided in this article and are subject to Section 8610.3 and the following restrictions:

(a) From June 1 to November 15, inclusive, shark or swordfish gill nets shall not be in the water from two hours after sunrise to two hours before sunset east of a line described as follows:

From a point beginning at Las Pitas Point to San Pedro Point on Santa Cruz Island, thence to Gull Island Light, thence to the northeast extremity of San Nicolas Island, thence along the high water mark on the west side of San Nicolas Island to the southeast extremity of San Nicolas Island, thence to the northwest extremity of San Clemente Island, thence along the high water mark on the west side of San Clemente Island to the southeast extremity of San Clemente Island, thence along a line running 150° true from the southeast extremity of San Clemente Island to the westerly extension of the boundary line between the Republic of Mexico and San Diego County.

(b) (1) The total maximum length of a shark or swordfish gill net on the net reel on a vessel, on the deck of the vessel, and in the water at any time shall not exceed 6,000 feet in float line length. The float line length shall be determined by measuring the float line, as tied, of all the net panels, excluding the bridle, towline, or stotza and excluding the parachute or other drogue device.

(2) Any shark or swordfish gill net on the reel shall have the float lines of the adjacent panels tied together, the lead lines of the adjacent panels tied together, and the web of the adjacent panels laced together. No quick disconnect device may be used unless the total maximum length of all shark and swordfish gill nets, including all spare gill nets or net panels on the vessel and all gill nets or net panels on the net reels on the vessel, on the deck of the vessel, stored aboard the vessel, and in the water, does not exceed 6,000 feet in float line length as determined under paragraph (1).

(3) Spare shark or swordfish gill net aboard the vessel shall not exceed 250 fathoms (1,500 feet) in total length, and the spare net shall be in separated panels of not to exceed 100 fathoms (600 feet) in float line length for each panel, with the float lines and leadlines attached to each panel separately gathered and tied, and the spare net panels stowed in lockers, wells, or other storage space.

(4) If a torn panel is replaced in a working shark or swordfish gill net, the torn panel shall be removed from the working net before the replacement panel is attached to the working net.

(c) Any end of a shark or swordfish gill net not attached to the permittee's vessel shall be marked by a pole with a radar reflector. The reflector shall be at least six feet above the surface of the ocean and not less than 10 inches in any dimension except thickness. The permittee's permit number shall be permanently affixed to at least one buoy or float which is attached to the radar reflector staff. The permit number shall be at least one and one-half inches in height and all markings shall be at least one-quarter inch in width.

(d) For the purposes of this article, "shark or swordfish gill net"

means a drift gill net of 14-inch or greater mesh size.

SEC. 8. Section 8575 of the Fish and Game Code is amended to read:

8575. Drift gill nets used to take shark and swordfish under the permit provided in this article shall not be used under the following circumstances:

(a) From May 1 through July 31, within six nautical miles westerly, northerly, and easterly of the shoreline of San Miguel Island between a line extending six nautical miles west magnetically from Point Bennett and a line extending six nautical miles east magnetically from Cardwell Point and within six nautical miles westerly, northerly, and easterly of the shoreline of Santa Rosa Island between a line extending six nautical miles west magnetically from Sandy Point and a line extending six nautical miles east magnetically from Skunk Point.

(b) From May 1 through July 31, within 10 nautical miles westerly, southerly, and easterly of the shoreline of San Miguel Island between a line extending 10 nautical miles west magnetically from Point Bennett and a line extending 10 nautical miles east magnetically from Cardwell Point and within 10 nautical miles westerly, southerly, and easterly of the shoreline of Santa Rosa Island between a line extending 10 nautical miles west magnetically from Sandy Point and a line extending 10 nautical miles east magnetically from Skunk Point.

(c) From May 1 through July 31, within a radius of 10 nautical miles of the west end of San Nicolas Island.

(d) From August 15 through September 30, in ocean waters bounded as follows: beginning at Dana Point, Orange County, in a direct line to Church Rock, Catalina Island; thence in a direct line to Point La Jolla, San Diego County; and thence northwesterly along the mainland shore to Dana Point.

(e) From August 15 through September 30, in ocean waters within six nautical miles of the coastline on the northerly and easterly side of San Clemente Island, lying between a line extending six nautical miles west magnetically from the extreme northerly end of San Clemente Island to a line extending six nautical miles east magnetically from Pyramid Head.

(f) From December 15 through January 31, in ocean waters within 25 nautical miles of the mainland coastline.

SEC. 9. Section 8576 of the Fish and Game Code is amended to read:

8576. (a) Drift gill nets shall not be used to take shark or swordfish from February 1 to April 30, inclusive.

(b) Drift gill nets shall not be used to take shark or swordfish in ocean waters within 75 nautical miles from the mainland coastline between the westerly extension of the California-Oregon boundary line and the westerly extension of the United States-Republic of Mexico boundary line from May 1 to August 14, inclusive.

(c) Subdivisions (a) and (b) apply to any drift gill net used

pursuant to a permit issued under Section 8561 or 8681.

(d) Notwithstanding the closure from May 1 to August 14, inclusive, in subdivision (b), a permittee may land swordfish or thresher shark taken in ocean waters more than 75 nautical miles from the mainland coastline in that period if, for each landing during that closed period, the permittee signs a written declaration under penalty of perjury that the fish landed were taken more than 75 nautical miles from the mainland coastline.

(e) If any person is convicted of falsely swearing a declaration under subdivision (d), in addition to any other penalty prescribed by law, the following penalties shall be imposed:

(1) The fish landed shall be forfeited, or, if sold, the proceeds from the sale shall be forfeited, pursuant to Sections 12159, 12160, 12161, and 12162.

(2) All shark or swordfish gill nets possessed by the permittee shall be seized and forfeited pursuant to Section 8630 or 12157.

(f) From August 15 of the year of issue to January 31, inclusive, of the following year, swordfish may be taken under a permit issued pursuant to this article.

SEC. 10. Section 8577 of the Fish and Game Code is amended to read:

8577. Notwithstanding Section 8394, the director may close the drift gill net shark and swordfish fishery, the swordfish harpoon fishery, or any area where either or both fisheries are conducted, if, after a public hearing, the director determines the action is necessary to protect the swordfish or thresher shark and bonito (mako) shark resources.

The director shall reopen a fishery or any fishing areas previously closed pursuant to this section if the director determines that the conditions which necessitated the closure no longer exist.

SEC. 11. Section 8578 of the Fish and Game Code is repealed.

SEC. 12. Section 8583 of the Fish and Game Code is repealed.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 440

An act to add Section 25201.5.1 to the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 25201.5.1 is added to the Health and Safety Code, to read:

25201.5.1. (a) Notwithstanding any other provision of law, a hazardous waste facilities permit is not required for a generator whose hazardous waste treatment activities meet all of the following conditions:

(1) The hazardous waste being treated is effluent hazardous waste from the processing of silver halide-based imaging products.

(2) The effluent is a hazardous waste solely due to its silver content.

(3) Not more than 10 gallons are treated in any calendar month.

(4) The effluent is treated with a technology or combination of technologies which recover the silver to a level less than 5 mg /l total silver in the final wastewater discharge, or a lower level as may be set by the local publicly owned treatment works, without being diluted by wash water or other photoprocessing solutions.

(5) The hazardous waste is treated on the site where it is generated.

(6) The hazardous waste is treated within 90 days of its generation.

(7) The hazardous waste is treated in a tank or container.

(b) To qualify for the exemption provided by subdivision (a), the generator shall be in compliance with all regulatory requirements applicable to generators of hazardous waste specified in Chapter 12 (commencing with Section 66262.10) of Division 4.5 of Title 22 of the California Code of Regulations.

(c) Upon terminating treatment exempted pursuant to this section, the generator shall remove or decontaminate all waste residues, containment system components, soils, and other structures or equipment that were contaminated with hazardous waste during treatment. The removal of any unit from service shall be conducted in a manner that does both of the following:

(1) Minimizes the need for further maintenance.

(2) Eliminates the escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or waste decomposition products to the environment after the treatment process is no longer in operation.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the

only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 441

An act to amend Sections 25356.1 and 25358.9 of, and to add Section 25323.1 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 25323.1 is added to the Health and Safety Code, to read:

25323.1. "Removal action workplan" means a workplan prepared or approved by the department or a California regional water quality control board which is developed to carry out a removal action, in an effective manner, which is protective of the public health and safety and the environment. The removal action workplan shall include a detailed engineering plan for conducting the removal action, a description of the onsite contamination, the goals to be achieved by the removal action, and any alternative removal options that were considered and rejected and the basis for that rejection.

SEC. 2. Section 25356.1 of the Health and Safety Code is amended to read:

25356.1. (a) For purposes of this section, "regional board" means a California regional water quality control board and "state board" means the State Water Resources Control Board.

(b) Except as provided in subdivision (h), the department, or, if appropriate, the regional board shall prepare or approve remedial action plans for all sites listed pursuant to Section 25356.

(c) A potentially responsible party may request the department or the regional board, when appropriate, to prepare or approve a remedial action plan for any site not listed pursuant to Section 25356, if the department or the regional board determines that a removal or remedial action is required to respond to a release of a hazardous substance. The department or the regional board shall respond to a request to prepare or approve a remedial action plan within 90 days of receipt. This subdivision does not affect the authority of any regional board to issue and enforce a cleanup and abatement order pursuant to Section 13304 of the Water Code or a cease and desist

order pursuant to Section 13301 of the Water Code.

(d) All remedial action plans prepared or approved pursuant to this section shall be based upon Section 25350, Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.61 et seq.), and any amendments thereto, and upon all of the following factors, to the extent that these factors are consistent with these federal regulations and do not require a less stringent level of cleanup than these federal regulations:

(1) Health and safety risks posed by the conditions at the site. When considering these risks, the department or the regional board shall consider scientific data and reports which may have a relationship to the site.

(2) The effect of contamination or pollution levels upon present, future, and probable beneficial uses of contaminated, polluted, or threatened resources.

(3) The effect of alternative remedial action measures on the reasonable availability of groundwater resources for present, future, and probable beneficial uses. The department or the regional board shall consider the extent to which remedial action measures are available which use, as a principal element, treatment that significantly reduces the volume, toxicity, or mobility of the hazardous substances, as opposed to remedial actions which do not use this treatment. The department or the regional board shall not select remedial action measures which use offsite transport and disposal of untreated hazardous substances or contaminated materials if practical and cost-effective treatment technologies are available.

(4) Site specific characteristics, including the potential for offsite migration of hazardous substances, the surface or subsurface soil, and the hydrogeologic conditions, as well as preexisting background contamination levels.

(5) Cost-effectiveness of alternative remedial action measures. In evaluating the cost-effectiveness of proposed alternative remedial action measures, the department or the regional board shall consider, to the extent possible, the total short-term and long-term costs of these actions and shall use, as a major factor, whether the deferral of a remedial action will result, or is likely to result, in a rapid increase in cost or in the hazard to public health or the environment posed by the site. Land disposal shall not be deemed the most cost-effective measure merely on the basis of lower short-term cost.

(6) The potential environmental impacts of alternative remedial action measures, including, but not limited to, land disposal of the untreated hazardous substances as opposed to treatment of the hazardous substances to remove or reduce its volume, toxicity, or mobility prior to disposal.

(e) A remedial action plan prepared or approved pursuant to this section shall include a statement of reasons setting forth the basis for the removal and remedial actions selected. The statement shall include an evaluation of each proposed alternative submitted to, or

prepared by, the department or the regional board for a particular site. The statement shall also include an evaluation of the consistency of the removal and remedial actions proposed by the plan with the federal regulations and factors specified in subdivision (d) and shall set forth the reasons for rejection of alternative removal and remedial actions. The statement shall also include a nonbinding preliminary allocation of responsibility among all identifiable potentially responsible parties at a particular site, including those parties which may have been released, or may otherwise be immune, from liability pursuant to this chapter or any other provision of law. Before adopting a final remedial action plan, the department or the regional board shall prepare or approve a draft remedial action plan and shall do all of the following:

(1) Circulate the draft plan for at least 30 days for public comment.

(2) Notify affected local and state agencies of the removal and remedial actions proposed in the remedial action plan and publish a notice in a newspaper of general circulation in the area affected by the draft remedial action plan. The department or the regional board shall also post notices in the location where the proposed removal or remedial action would be located and shall notify, by direct mailing, the owners of property contiguous to the site addressed by the plan, as shown in the latest equalized assessment roll.

(3) Hold one or more meetings with the lead and responsible agencies for the removal and remedial actions, the potentially responsible parties for the removal and remedial actions, and the interested public, to provide the public with the information which is necessary to address the issues which concern the public. The information to be provided shall include an assessment of the degree of contamination, the characteristics of the hazardous substances, an estimate of the time required to carry out the removal and remedial actions, and a description of the proposed removal and remedial actions.

(4) Comply with Section 25358.7.

(f) After complying with subdivision (e), the department or the regional board shall review and consider any public comments, and shall revise the draft plan, if appropriate. The department or the regional board shall then issue the final remedial action plan.

(g) (1) A potentially responsible party named in the final remedial action plan issued by the department or the regional board may seek judicial review of the final remedial action plan by filing a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure within 30 days after the final remedial action plan is issued by the department or the regional board. Any other person who has the right to seek judicial review of the final remedial action plan by filing a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure shall do so within one year after the final remedial action plan is issued. No action may be brought by a potentially responsible party to review the final remedial action plan

if the petition for writ of mandate is not filed within 30 days of the date that the final remedial action plan was issued. No action may be brought by any other person to review the final remedial action plan if the petition for writ of mandate is not filed within one year of the date that the final remedial action plan was issued. The filing of a petition for writ of mandate to review the final remedial action plan shall not stay any removal or remedial action specified in the final plan.

(2) For purposes of judicial review, the court shall uphold the final remedial action plan if the plan is based upon substantial evidence available to the department or the regional board, as the case may be.

(3) This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction, including, but not limited to, enjoining the expenditure of funds pursuant to paragraph (2) of subdivision (b) of Section 25385.6.

(h) (1) This section does not require the department or a regional board to prepare a remedial action plan if conditions present at a site present an imminent or substantial endangerment to the public health and safety or to the environment or, if the department, a regional board, or a responsible party takes a removal action at a site and the estimated cost of the removal action is less than one million dollars ($1,000,000). The department or a regional board shall prepare or approve a removal action workplan for all sites where a nonemergency removal action is proposed and where a remedial action plan is not required. For sites where removal actions are planned and are projected to cost less than one million dollars ($1,000,000), the department or a regional board shall make the local community aware of the hazardous substance release site and shall prepare, or direct the parties responsible for the removal action to prepare, a community profile report to determine the level of public interest in the removal action. Based on the level of expressed interest, the department or regional board shall take appropriate action to keep the community informed of project activity and to provide opportunities for public comment which may include conducting a public meeting on proposed removal actions.

(2) A remedial action plan is not required pursuant to subdivision (b) if the site is listed on the National Priority List by the Environmental Protection Agency pursuant to the federal act, if the department or the regional board concurs with the remedy selected by the Environmental Protection Agency's record of decision. The department or the regional board may sign the record of decision issued by the Environmental Protection Agency if the department or the regional board concurs with the remedy selected.

(3) The department may waive the requirement that a remedial action plan meet the requirements specified in subdivision (d) if all of the following apply:

(A) The responsible party adequately characterizes the hazardous substance conditions at a site listed pursuant to Section

25356.

(B) The responsible party submits to the department, in a form acceptable to the department, all of the following:

(i) A description of the techniques and methods to be employed in excavating, storing, handling, transporting, treating, and disposing of materials from the site.

(ii) A listing of the alternative remedial measures which were considered by the responsible party in selecting the proposed removal action.

(iii) A description of methods that will be employed during the removal action to ensure the health and safety of workers and the public during the removal action.

(iv) A description of prior removal actions with similar hazardous substances and with similar public safety and environmental considerations.

(C) The department determines that the remedial action plan provides protection of human health and safety and for the environment at least equivalent to that which would be provided by a remedial action plan prepared in accordance with subdivision (c).

(D) The total cost of the removal action is less than two million dollars ($2,000,000).

(4) For purposes of this section, the cost of a removal action includes the cleanup of removal of released hazardous substances from the environment or the taking of other actions which are necessary to prevent, minimize, or mitigate damage which may otherwise result from a release or threatened release, as further defined by Section 9601 (23) of Title 42 of the United States Code.

(5) Paragraph (2) of this subdivision does not apply to a removal action paid from the Hazardous Substance Cleanup Fund.

(i) Article 2 (commencing with Section 13320), Article 3 (commencing with Section 13330), Article 5 (commencing with Section 13350), and Article 6 (commencing with Section 13360) of Chapter 5 of Division 7 of the Water Code apply to any action or failure to act by a regional board pursuant to this section.

SEC. 3. Section 25358.9 of the Health and Safety Code is amended to read:

25358.9. (a) To the extent consistent with the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the department may exclude any portion of a response action conducted entirely onsite from the hazardous waste facility permit requirements of Section 25201 if both of the following apply:

(1) The removal or remedial action is carried out pursuant to a removal action workplan or a remedial action plan prepared pursuant to Section 25356.1.

(2) The removal action workplan or the remedial action plan requires that the response action complies with all laws, rules, regulations, standards, and requirements, criteria, or limitations applicable to the construction, operation, and closure of the type of facility at the hazardous substance release site and with any other

condition imposed by the department as necessary to protect public health and safety and the environment.

(b) The department may enforce in the court for the county in which a response action exempted pursuant to subdivision (a) is located any federal or state law, rule, regulation, standard, requirements, criteria, or limitation with which the remedial or removal action is required to comply. Any consent decree entered into pursuant to an enforcement action authorized by this subdivision shall require the parties to attempt expeditiously to informally resolve any disagreements concerning the implementation of the response action with the appropriate federal and state agencies and shall provide for administrative enforcement. The consent decree shall stipulate that the penalty for violation of the consent decree shall be in an amount of not more than twenty-five thousand dollars ($25,000) per day, which may be enforced by the state. These penalties do not impair or affect the authority of the court to order compliance with the specific terms of the consent decree.

CHAPTER 442

An act to amend Section 25323.5 of the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 25323.5 of the Health and Safety Code is amended to read:

25323.5. (a) (1) "Responsible party" or "liable person," for the purposes of this chapter, means those persons described in Section 107(a) of the federal act (42 U.S.C. Sec. 9607(a)).

(2) (A) Notwithstanding paragraph (1), but except as provided in subparagraph (B), a person is not a responsible party or liable person, for purposes of this chapter, for the reason that the person has developed or implemented innovative investigative or innovative remedial technology with regard to a release site, if the use of the technology has been approved by the department for the release site and the person would not otherwise be a responsible party or liable person. Upon approval of the use of the technology, the director shall acknowledge, in writing, that, upon proper completion of the innovative investigative or innovative remedial action at the release site, the immunity provided by this subparagraph shall apply to the person.

(B) Subparagraph (A) does not apply in any of the following cases:

(i) Conditions at the release site have deteriorated as a result of the negligence of the person who developed or implemented the innovative investigative or innovative remedial technology.

(ii) The person who developed or implemented the innovative investigative or innovative remedial technology withheld or misrepresented information that was relevant to the potential risks or harms of the technology.

(iii) The person who implemented the innovative investigative or innovative remedial technology did not follow the implementation process approved by the department.

(b) For the purposes of this chapter, the defenses available to a responsible party or liable person shall be those defenses specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)).

CHAPTER 443

An act to amend Section 42352.5 of, and to add Article 2.5 (commencing with Section 42365) to Chapter 4 of Part 4 of Division 26 of, the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 42352.5 of the Health and Safety Code is amended to read:

42352.5. (a) The hearing board, in determining whether or not the petitioner has presented evidence sufficient to make the finding specified in paragraph (2) of subdivision (a) of Section 42352 or paragraph (2) of subdivision (a) of Section 42368, shall consider, in addition to any other relevant factors, both of the following:

(1) In determining whether or not conditions exist which are beyond the reasonable control of the petitioner, the hearing board shall consider the extent to which the petitioner took actions to comply or seek a variance, which were timely and reasonable under the circumstances. In so doing, the hearing board shall consider actions taken by the petitioner since the adoption of the rule, regulation, or order from which the variance is sought.

(2) In determining whether or not requiring compliance would result in either an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful business, the hearing board shall consider whether or not an unreasonable burden would be imposed upon the petitioner if immediate compliance is required.

(b) (1) As used in this subdivision, "small business" has the same meaning as defined by the Small Business Administration, except

that no stationary source which is a major source, as defined by applicable provisions of the federal Clean Air Act (42 U.S.C. Sec. 7661(2)), is a small business.

(2) If the petitioner is a small business and emits 10 tons or less per year of air contaminants, the hearing board shall consider the factors specified in subdivision (a) in the following manner:

(A) In determining the extent to which the petitioner took timely actions to comply or seek a variance, the hearing board shall make specific inquiries into, and shall take into account, the reasons for any claimed ignorance of the requirement from which a variance is sought.

(B) In determining the extent to which the petitioner took reasonable actions to comply, the hearing board shall make specific inquiries into, and shall take into account, the petitioner's financial and other capabilities to comply.

(C) In determining whether or not the burden of requiring immediate compliance would be unreasonable, the hearing board shall make specific inquiries into, and shall consider, the impact on the petitioner's business and the benefit to the environment which would result if the petitioner is required to immediately comply.

SEC. 2. Article 2.5 (commencing with Section 42365) is added to Chapter 4 of Part 4 of Division 26 of the Health and Safety Code, to read:

Article 2.5. Product Variances

42365. Any person who manufactures a product may petition the hearing board for a product variance from a rule or regulation of the district pursuant to this article.

42366. A product variance is only available if, to provide effective relief, the variance is required to be granted for, and attached to, a particular product, as distinguished from the variance that may be granted to an individual petitioner pursuant to Section 42352. A product variance shall be granted only when a product does not comply with district rules or regulations and the variance is necessary for the sale, supply, distribution, or use of the product.

42367. No product variance shall be granted pursuant to this article from a requirement for a permit to build, erect, alter, or replace any article, machine, equipment, or other contrivance pursuant to Section 42300.

42368. (a) No product variance shall be granted unless the hearing board makes all of the following findings:

(1) The manufacture, distribution, offering for sale, sale, application, soliciting the application, or use of the product is, or will be, in violation of a rule, regulation, or order of the district.

(2) Due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (A) an arbitrary or unreasonable taking of property, or (B) the practical closing and elimination of a lawful business.

(3) The taking or closing would be without a corresponding benefit in reducing air contaminants.

(4) The petitioner exercised due diligence in attempting to locate, research, or develop a product that is in compliance with district rules and regulations.

(5) During the period that the product variance is in effect, the petitioner shall quantify any excess emissions to the maximum extent feasible and report the emission levels to the district, if requested by the district.

(b) If the product variance is granted subject to conditions on the use of the product, within 10 days from the effective date of the variance, and for the duration of the time period of the variance, the petitioner shall cause a written notice to be furnished to any retailer, distributor, and purchaser of the product who is located within the district. The written notice shall be, attached to, or otherwise accompany, the product, and shall include all of the following information:

(1) That the product is being sold pursuant to a product variance granted by the district hearing board.

(2) The beginning and ending dates of the product variance.

(3) Any other conditions set forth in the product variance.

(c) Within 10 days from the effective date of the granting of the product variance, the district shall cause to be published pursuant to Section 6061 of the Government Code, the information specified in subdivision (b).

(d) The district hearing board may prescribe requirements or conditions in the product variance that are applicable to the product, other than those imposed by statute or by any rule, regulation, or order of the district board, if those requirements or conditions are not more onerous.

42369. (a) No product variance shall be granted if the use of the product under the variance will result in a violation of Section 41700.

(b) No emergency product variance shall be granted pursuant to this article.

42370. If the product variance is granted and the product is in compliance with subdivisions (b) and (d) of Section 42368, the petitioner may manufacture, and any person may distribute, offer for sale, sell, apply, solicit the application of, or use the product under the conditions set forth in the product variance.

42371. Sections 42350.5, 42351, 42351.5, 42352.5, 42354 to 42357, inclusive, 42359, and 42362 to 42364, inclusive, shall apply to the granting of product variances pursuant to this article.

42372. (a) The hearing board, in making any order permitting a product variance, shall specify the time during which the order shall be effective, which, except as provided in subdivision (b), shall not exceed one year, and shall set a final compliance date.

(b) A product variance may be issued for a period exceeding one year, but in no event to exceed two years from the date of the granting of the initial product variance, if the product variance

includes a schedule of increments of progress specifying a final compliance date by which the emission of air contaminants from the product for which the product variance is granted will be brought into compliance with applicable emission standards and all district rules, regulations, and orders. No extension may be granted to a petitioner without a showing of good cause and proof of compliance with the findings required by Section 42368.

(c) If the product variance is for a process or product that is equivalent to, or exceeds, the applicable standards required by the district's rules and regulations, and the hearing board granting the variance specifies that the only way to achieve compliance will be for the district to adopt or amend a rule or regulation, the air pollution control officer within 180 days from the effective date of the variance, shall set a public hearing before the district governing board and make a recommendation on whether or not the board should adopt or amend a rule or regulation to bring the product into compliance. The district governing board shall, within one year of the effective date of the variance, take action to (1) adopt or amend a district rule or regulation to bring the product into compliance, or (2) determine that no amendment, rule, or regulation is warranted. If the district governing board fails to take either action, nothing in this subdivision shall limit the petitioner's rights and remedies under existing law.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the continued operation and competitiveness of businesses and manufacturers in this state, thereby preserving jobs and improving the general economic climate, it is necessary that this act take effect immediately.

CHAPTER 444

An act to amend Section 13009 of the Health and Safety Code, relating to emergency response.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 13009 of the Health and Safety Code is amended to read:

13009. (a) Any person (1) who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him or her to escape onto any public or private property, (2) other than a mortgagee, who, being in actual possession of a structure, fails or refuses to correct, within the time allotted for correction, despite having the right to do so, a fire hazard prohibited by law, for which a public agency properly has issued a notice of violation respecting the hazard, or (3) including a mortgagee, who, having an obligation under other provisions of law to correct a fire hazard prohibited by law, for which a public agency has properly issued a notice of violation respecting the hazard, fails or refuses to correct the hazard within the time allotted for correction, despite having the right to do so, is liable for the fire suppression costs incurred in fighting the fire and for the cost of providing rescue or emergency medical services, and those costs shall be a charge against that person. The charge shall constitute a debt of that person, and is collectible by the person, or by the federal, state, county, public, or private agency, incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied.

(b) Public agencies participating in fire suppression, rescue, or emergency medical services as set forth in subdivision (a), may designate one or more of the participating agencies to bring an action to recover costs incurred by all of the participating agencies. An agency designated by the other participating agencies to bring an action pursuant to this section shall declare that authorization and its basis in the complaint, and shall itemize in the complaint the total amounts claimed under this section by each represented agency.

(c) Any costs incurred by the Department of Forestry and Fire Protection in suppressing any wildland fire originating or spreading from a prescribed burning operation conducted by the department pursuant to a contract entered into pursuant to Article 2 (commencing with Section 4475) of Chapter 7 of Part 2 of Division 4 of the Public Resources Code shall not be collectible from any party to the contract, including any private consultant or contractor who entered into an agreement with that party pursuant to subdivision (d) of Section 4475.5 of the Public Resources Code, as provided in subdivision (a), to the extent that those costs were not incurred as

a result of a violation of any provision of the contract.

(d) This section applies to all areas of the state, regardless of whether primarily wildlands, sparsely developed, or urban.

CHAPTER 445

An act to repeal and add Section 6404 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

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

SECTION 1. Section 6404 of the Food and Agricultural Code is repealed.

SEC. 2. Section 6404 is added to the Food and Agricultural Code, to read:

6404. The secretary may enter into agreements with regulatory officials of other states and the United States Department of Agriculture to provide for the use of various pest risk mitigation measures at the place of origin of the shipment of the plants. The agreement may designate the plants or varieties of plants to which those measures are applied as being commodities that may be released upon arrival at ports of entry or terminals in this state without being held and inspected for compliance with standards and quarantine requirements.

CHAPTER 446

An act to amend Section 667.71 of the Penal Code, relating to criminal law.

[Approved by Governor September 8, 1994. Filed with Secretary of State September 9, 1994.]

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

SECTION 1. Section 667.71 of the Penal Code is amended to read:

667.71. (a) For the purpose of this section, a habitual sexual offender is a person who previously has served at least one prison term for one or more of the offenses listed in subdivision (d) and is convicted in the present proceeding of one of those offenses.

(b) A habitual sexual offender is punishable by imprisonment in the state prison for 25 years to life. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to

reduce any minimum term of 25 years in the state prison imposed pursuant to this section. However, no habitual sexual offender sentenced under this subdivision may be released on parole until he or she has been incarcerated for at least 25 years.

(c) At the request of the prosecutor and in lieu of the punishment specified in subdivision (b), the court shall order that the defendant be punished pursuant to Section 667.6, 667.7, or 1170.1, if applicable.

(d) This section shall apply to persons found guilty of violating paragraph (2) of subdivision (a) of Section 261, Section 264.1, subdivision (a) of Section 289, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, or found guilty of kidnapping, as punished in subdivision (d) of Section 208, or an offense committed in another jurisdiction that has all the elements of an offense specified in this subdivision.

(e) This section shall apply only if the defendant's status as a habitual sexual offender is alleged in the information, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by court sitting without a jury.

CHAPTER 447

An act to amend Sections 667.71 and 1203.066 of, and to add Section 667.61 to, the Penal Code, relating to sex offenses.

[Approved by Governor September 8, 1994. Filed with Secretary of State September 9, 1994.]

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

SECTION 1. Section 667.61 is added to the Penal Code, to read:

667.61. (a) A person who is convicted of an offense specified in subdivision (c) under one or more of the circumstances specified in subdivision (d) or under two or more of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 25 years except as provided in subdivision (j).

(b) Except as provided in subdivision (a), a person who is convicted of an offense specified in subdivision (c) under one of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 15 years except as provided in subdivision (j).

(c) This section shall apply to any of the following offenses:

(1) A violation of paragraph (2) of subdivision (a) of Section 261.

(2) A violation of paragraph (1) of subdivision (a) of Section 262.

(3) A violation of Section 264.1.

(4) A violation of subdivision (b) of Section 288.

(5) A violation of subdivision (a) of Section 289.

(6) Sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(7) A violation of subdivision (a) of Section 288, unless the defendant qualifies for probation under subdivision (c) of Section 1203.066.

(d) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) The defendant has been previously convicted of an offense specified in subdivision (c), including an offense committed in another jurisdiction that includes all of the elements of an offense specified in subdivision (c).

(2) The defendant kidnapped the victim of the present offense and the movement of the victim substantially increased the risk of harm to the victim over and above that level of risk necessarily inherent in the underlying offense in subdivision (c).

(3) The defendant inflicted aggravated mayhem or torture on the victim or another person in the commission of the present offense in violation of Section 205 or 206.

(4) The defendant committed the present offense during the commission of a burglary, as defined in subdivision (a) of Section 460, with intent to commit an offense specified in subdivision (c).

(e) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) Except as provided in paragraph (2) of subdivision (d), the defendant kidnapped the victim of the present offense in violation of Section 207, 208, 209, or 209.5.

(2) Except as provided in paragraph (4) of subdivision (d), the defendant committed the present offense during the commission of a burglary, as defined in subdivision (a) of Section 460, or during the commission of a burglary of a building, including any commercial establishment, which was then closed to the public, in violation of Section 459.

(3) The defendant personally inflicted great bodily injury on the victim or another person in the commission of the present offense in violation of Section 12022.7 or 12022.8.

(4) The defendant personally used a dangerous or deadly weapon or firearm in the commission of the present offense in violation of Section 12022, 12022.3, or 12022.5.

(5) The defendant has been convicted in the present case or cases of committing an offense specified in subdivision (c) against more than one victim.

(6) The defendant engaged in the tying or binding of the victim or another person in the commission of the present offense.

(7) The defendant administered a controlled substance to the victim by force, violence, or fear in the commission of the present

offense in violation of Section 12022.75.

(f) If only the minimum number of circumstances specified in subdivision (d) or (e) which are required for the punishment provided in subdivision (a) or (b) to apply have been pled and proved, that circumstance or those circumstances shall be used as the basis for imposing the term provided in subdivision (a) or (b) rather than being used to impose the punishment authorized under any other law, unless another law provides for a greater penalty. However, if any additional circumstance or circumstances specified in subdivision (d) or (e) have been pled and proved, the minimum number of circumstances shall be used as the basis for imposing the term provided in subdivision (a), and any other additional circumstance or circumstances shall be used to impose any punishment or enhancement authorized under any other law. Notwithstanding any other law, the court shall not strike any of the circumstances specified in subdivision (d) or (e).

(g) The term specified in subdivision (a) or (b) shall be imposed on the defendant once for any offense or offenses committed against a single victim during a single occasion. If there are multiple victims during a single occasion, the term specified in subdivision (a) or (b) shall be imposed on the defendant once for each separate victim. Terms for other offenses committed during a single occasion shall be imposed as authorized under any other law, including Section 667.6, if applicable.

(h) Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is subject to punishment under this section for any offense specified in paragraphs (1) to (6), inclusive, of subdivision (c).

(i) For the penalties provided in this section to apply, the existence of any fact required under subdivision (d) or (e) shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

(j) Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce the minimum term of 25 years in the state prison imposed pursuant to subdivision (a) or 15 years in the state prison imposed pursuant to subdivision (b). However, in no case shall the minimum term of 25 or 15 years be reduced by more than 15 percent for credits granted pursuant to Section 2933, 4019, or any other law providing for conduct credit reduction. In no case shall any person who is punished under this section be released on parole prior to serving at least 85 percent of the minimum term of 25 or 15 years in the state prison.

SEC. 2. Section 667.71 of the Penal Code is amended to read:

667.71. (a) For the purpose of this section, a habitual sexual offender is a person who has been previously convicted of one or more of the offenses listed in subdivision (d) and who is convicted in the present proceeding of one of those offenses.

(b) A habitual sexual offender is punishable by imprisonment in the state prison for 25 years to life. Article 2.5 (commencing with

Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 25 years in the state prison imposed pursuant to this section. However, in no case shall the minimum term of 25 years be reduced by more that 15 percent for credits granted pursuant to Section 2933, 4019, or any other law providing for conduct credit reduction. In no case shall any person who is punished under this section be released on parole prior to serving at least 85 percent of the minimum term of 25 years in the state prison.

(c) At the request of the prosecutor and in lieu of the punishment specified in subdivision (b), the court shall order that the defendant be punished pursuant to Section 667.6, 667.61, 667.7, or 1170.1, if applicable.

(d) This section shall apply to persons found guilty of violating paragraph (2) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262, Section 264.1, subdivision (a) or (b) of Section 288, subdivision (a) of Section 289, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, or found guilty of kidnapping, as punished in subdivision (d) of Section 208, or an offense committed in another jurisdiction that has all the elements of an offense specified in this subdivision.

(e) This section shall apply only if the defendant's status as a habitual sexual offender is alleged in the information, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by court sitting without a jury.

SEC. 3. Section 1203.066 of the Penal Code is amended to read:

1203.066. (a) Notwithstanding Section 1203 or any other law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provisions of this section be stricken pursuant to Section 1385 for, any of the following persons:

(1) A person who is convicted of violating Section 288 or 288.5 when the act is committed by the use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(2) A person who caused bodily injury on the child victim in committing a violation of Section 288 or 288.5.

(3) A person who is convicted of a violation of Section 288 or 288.5 and who was a stranger to the child victim or befriended the child victim for the purpose of committing an act in violation of Section 288 or 288.5, unless the defendant honestly and reasonably believed the victim was 14 years of age or older.

(4) A person who used a weapon during the commission of a violation of Section 288 or 288.5.

(5) A person who is convicted of committing a violation of Section 288 or 288.5 and who has been previously convicted of a violation of

Section 261, 262, 264.1, 266, 266c, 267, 285, 286, 288, 288.5, 288a, or 289, or of assaulting another person with intent to commit a crime specified in this paragraph in violation of Section 220, or who has been previously convicted in another state of an offense which, if committed or attempted in this state, would constitute an offense enumerated in this paragraph.

(6) A person who violated Section 288 or 288.5 while kidnapping the child victim in violation of Section 207, 208, or 209.

(7) A person who is convicted of committing a violation of Section 288 or 288.5 against more than one victim.

(8) A person who, in violating Section 288 or 288.5, has substantial sexual conduct with a victim who is under 14 years of age.

(9) A person who, in committing a violation of Section 288 or 288.5, used obscene matter, as defined in Section 311, or matter, as defined in Section 311, depicting sexual conduct, as defined in Section 311.3.

(b) As used in this section, "substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or by any foreign object, oral copulation, or masturbation of either the victim or the offender.

(c) Paragraph (7), (8), or (9) of subdivision (a) shall not apply when the court makes all of the following findings:

(1) The defendant is the victim's natural parent, adoptive parent, stepparent, relative, or is a member of the victim's household who has lived in the household.

(2) A grant of probation to the defendant is in the best interest of the child.

(3) Rehabilitation of the defendant is feasible, and the defendant is placed in a recognized treatment program that is designed to deal with child molestation immediately after the grant of probation or the suspension of execution or imposition of sentence.

(4) The defendant is removed from the household of the victim until the court determines that the best interests of the victim would be served by returning the defendant to the household of the victim.

(5) There is no threat of physical harm to the child victim if probation is granted. The court upon making its findings pursuant to this subdivision is not precluded from sentencing the defendant to jail or prison, but retains the discretion not to do so. The court shall state its reasons on the record for whatever sentence it imposes on the defendant.

The court shall order the psychiatrist or psychologist who is appointed pursuant to Section 288.1 to include a consideration of the factors specified in paragraphs (2), (3), and (4) in making his or her report to the court.

(d) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

SEC. 4. This bill shall become operative only if Assembly Bill 2261

and Assembly Bill 3707 of the 1993–94 Regular Session, and Assembly Bill 19 and Senate Bill 26 of the 1993–94 First Extraordinary Session, are enacted and become effective on or before January 1, 1995.

CHAPTER 448

An act to amend Sections 207.1, 707, 707.1, 707.2, and 800 of, and to add Sections 707.01 and 785 to, the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 9, 1994. Filed with Secretary of State September 9, 1994.]

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

SECTION 1. Section 207.1 of the Welfare and Institutions Code, as amended by Section 24 of Chapter 695 of the Statutes of 1992, is amended to read:

207.1. (a) No court, judge, referee, peace officer, or employee of a detention facility shall knowingly detain any minor in a jail or lockup, except as provided in subdivision (b) or (d).

(b) Any minor who is alleged to have committed an offense described in subdivision (b) of Section 707 whose case is transferred to a court of criminal jurisdiction pursuant to Section 707.1 after a finding is made that he or she is not a fit and proper subject to be dealt with under the juvenile court law, or any minor who has been charged directly in or transferred to a court of criminal jurisdiction pursuant to Section 707.01, may be detained in a jail or other secure facility for the confinement of adults, if all of the following conditions are met:

(1) The juvenile court or the court of criminal jurisdiction makes a finding that the minor's further detention in the juvenile hall would endanger the safety of the public or would be detrimental to the other minors in the juvenile hall.

(2) Contact between the minor and adults in the facility is restricted in accordance with Section 208.

(3) The minor is adequately supervised.

(c) A minor who is either found not to be a fit and proper subject to be dealt with under the juvenile court law or who will be transferred to a court of criminal jurisdiction pursuant to Section 707.01, at the time of transfer to a court of criminal jurisdiction or at the conclusion of the fitness hearing, as the case may be, shall be entitled to be released on bail or on his or her own recognizance upon the same circumstances, terms, and conditions as an adult who is alleged to have committed the same offense.

(d) A minor 14 years of age or older who is taken into temporary custody by a peace officer on the basis of being a person described by Section 602, and who, in the reasonable belief of the peace officer,

presents a serious security risk of harm to self or others, may be securely detained in a law enforcement facility that contains a lockup for adults, if all of the following conditions are met:

(1) The minor is held in temporary custody for the purpose of investigating the case, facilitating release of the minor to a parent or guardian, or arranging transfer of the minor to an appropriate juvenile facility.

(2) The minor is detained in the law enforcement facility for a period that does not exceed six hours except as provided in subdivision (g).

(3) The minor is informed at the time he or she is securely detained of the purpose of the secure detention, of the length of time the secure detention is expected to last, and of the maximum six-hour period the secure detention is authorized to last. In the event an extension is granted pursuant to subdivision (g), the minor shall be informed of the length of time the extension is expected to last.

(4) Contact between the minor and adults confined in the facility is restricted in accordance with Section 208.

(5) The minor is adequately supervised.

(6) A log or other written record is maintained by the law enforcement agency showing the offense which is the basis for the secure detention of the minor in the facility, the reasons and circumstances forming the basis for the decision to place the minor in secure detention, and the length of time the minor was securely detained.

Any other minor who is taken into temporary custody by a peace officer on the basis that the minor is a person described by Section 602, may be taken to a law enforcement facility that contains a lockup for adults and may be held in temporary custody in the facility for the purposes of investigating the case, facilitating the release of the minor to a parent or guardian, or arranging for the transfer of the minor to an appropriate juvenile facility. However, while in the law enforcement facility, the minor may not be securely detained and shall be supervised in a manner so as to ensure that there will be no contact with adults in custody in the facility. If the minor is held in temporary, nonsecure custody within the facility, the peace officer shall exercise one of the dispositional options authorized by Sections 626 and 626.5 without unnecessary delay and, in every case, within six hours.

"Law enforcement facility," as used in this subdivision, includes a police station or a sheriff's station, but does not include a jail, as defined in subdivision (i).

(e) The Department of the Youth Authority shall assist law enforcement agencies, probation departments, and courts with the implementation of this section by doing all of the following:

(1) The Department of the Youth Authority shall advise each law enforcement agency, probation department, and court affected by this section as to its existence and effect.

(2) The Department of the Youth Authority shall make available

and, upon request, shall provide technical assistance to each governmental agency that reported the confinement of a minor in a jail or lockup in calendar year 1984 or 1985. The purpose of this technical assistance is to develop alternatives to the use of jails or lockups for the confinement of minors. These alternatives may include secure or nonsecure facilities located apart from an existing jail or lockup; improved transportation or access to juvenile halls or other juvenile facilities; and other programmatic alternatives recommended by the Department of the Youth Authority. The technical assistance shall take any form the Department of the Youth Authority deems appropriate for effective compliance with this section.

(f) The Department of the Youth Authority may exempt a county that does not have a juvenile hall, or may exempt an offshore law enforcement facility, from compliance with this section for a reasonable period of time, until December 1, 1992, for the purpose of allowing the county or the facility to develop alternatives to the use of jails and lockups for the confinement of minors, if all of the following conditions are met:

(1) The county or the facility submits a written request to the Department of the Youth Authority for an extension of time to comply with this section.

(2) The Department of the Youth Authority agrees to make available, and the county or the facility agrees to accept, technical assistance to develop alternatives to the use of jails and lockups for the confinement of minors during the period of the extension.

(3) The county or the facility requesting the extension submits to the Department of the Youth Authority a written plan for full compliance with this section by September 1, 1987.

(g) (1) Under the limited conditions of inclement weather, acts of God, or natural disasters that result in the temporary unavailability of transportation, an extension of the six-hour maximum period of detention set forth in paragraph (2) of subdivision (d) may be granted to a county by the Department of the Youth Authority. The extensions may only be granted by the Department of the Youth Authority on an individual, case-by-case basis. If the extension is granted, the detention of minors under those conditions shall not exceed the duration of the special conditions, plus a period reasonably necessary to accomplish transportation of the minor to a suitable juvenile facility, not to exceed six hours after the restoration of available transportation.

A county that receives an extension under this paragraph shall comply with the requirements set forth in subdivision (d). The county also shall provide a written report to the Department of the Youth Authority that specifies when the inclement weather, act of God, or natural disaster ceased to exist, when transportation availability was restored, and when the minor was delivered to a suitable juvenile facility. In the event that the minor was detained in excess of 24 hours, the Department of the Youth Authority shall

verify the information contained in the report.

(2) Under the limited condition of temporary unavailability of transportation, an extension of the six-hour maximum period of detention set forth in paragraph (2) of subdivision (d) may be granted by the Department of the Youth Authority to an offshore law enforcement facility. The extension may be granted only by the Department of the Youth Authority on an individual, case-by-case basis. If the extension is granted, the detention of minors under those conditions shall extend only until the next available mode of transportation can be arranged.

An offshore law enforcement facility that receives an extension under this paragraph shall comply with the requirements set forth in subdivision (d). The facility also shall provide a written report to the Department of the Youth Authority that specifies when the next mode of transportation became available, and when the minor was delivered to a suitable juvenile facility. In the event that the minor was detained in excess of 24 hours, the Department of the Youth Authority shall verify the information contained in the report.

(3) At least annually, the Department of the Youth Authority shall review and report on extensions sought and granted under this subdivision. If, upon that review, the Department of the Youth Authority determines that a county has sought one or more extensions resulting in the excessive confinement of minors in adult facilities, or that a county is engaged in a pattern and practice of seeking extensions, it shall require the county to submit a detailed explanation of the reasons for the extensions sought and an assessment of the need for a conveniently located and suitable juvenile facility. Upon receiving this information, the Department of the Youth Authority shall make available, and the county shall accept, technical assistance for the purpose of developing suitable alternatives to the confinement of minors in adult lockups. Based upon the information provided by the county, the Department of the Youth Authority also may place limits on, or refuse to grant, future extensions requested by the county under this subdivision.

(h) Any county that did not have a juvenile hall on January 1, 1987, may establish a special purpose juvenile hall, as defined by the Department of the Youth Authority, for the detention of minors for a period not to exceed 96 hours. Any county that had a juvenile hall on January 1, 1987, also may establish, in addition to the juvenile hall, a special purpose juvenile hall. The Department of the Youth Authority shall prescribe minimum standards for any such facility.

(i) (1) "Jail," as used in this chapter, means any building that contains a locked facility administered by a law enforcement or governmental agency, the purpose of which is to detain adults who have been charged with violations of criminal law and are pending trial, or to hold convicted adult criminal offenders sentenced for less than one year.

(2) "Lockup," as used in this chapter, means any locked room or secure enclosure under the control of a sheriff or other peace officer

which is primarily for the temporary confinement of adults upon arrest.

(3) "Offshore law enforcement facility," as used in this section, means a sheriff's station containing a lockup for adults that is located on an island located at least 22 miles from the California coastline.

(j) Nothing in this section shall be deemed to prevent a peace officer or employee of an adult detention facility or jail from escorting a minor into the detention facility or jail for the purpose of administering an evaluation, test, or chemical test pursuant to Section 23157 of the Vehicle Code, if all of the following conditions are met:

(1) The minor is taken into custody by a peace officer on the basis of being a person described by Section 602 and there is no equipment for the administration of the evaluation, test, or chemical test located at a juvenile facility within a reasonable distance of the point where the minor was taken into custody.

(2) The minor is not locked in a cell or room within the adult detention facility or jail, is under the continuous, personal supervision of a peace officer or employee of the detention facility or jail, and is not permitted to come in contact or remain in contact with in-custody adults.

(3) The evaluation, test, or chemical test administered pursuant to Section 23157 of the Vehicle Code is performed as expeditiously as possible, so that the minor is not delayed unnecessarily within the adult detention facility or jail. Upon completion of the evaluation, test, or chemical test, the minor shall be removed from the detention facility or jail as soon as reasonably possible. No minor shall be held in custody in an adult detention facility or jail under the authority of this paragraph in excess of two hours.

(k) This section shall remain operative until July 1, 1995, on which date it shall be repealed.

SEC. 2. Section 207.1 of the Welfare and Institutions Code, as added by Section 25 of Chapter 695 of the Statutes of 1992, is amended to read:

207.1. (a) No court, judge, referee, peace officer, or employee of a detention facility shall knowingly detain any minor in a jail or lockup, except as provided in subdivision (b) or (d).

(b) Any minor who is alleged to have committed an offense described in subdivision (b) of Section 707 whose case is transferred to a court of criminal jurisdiction pursuant to Section 707.1 after a finding is made that he or she is not a fit and proper subject to be dealt with under the juvenile court law, or any minor who has been charged directly in or transferred to a court of criminal jurisdiction pursuant to Section 707.01, may be detained in a jail or other secure facility for the confinement of adults, if all of the following conditions are met:

(1) The juvenile court or the court of criminal jurisdiction makes a finding that the minor's further detention in the juvenile hall would endanger the safety of the public or would be detrimental to the

other minors in the juvenile hall.

(2) Contact between the minor and adults in the facility is restricted in accordance with Section 208.

(3) The minor is adequately supervised.

(4) The adult facility has been approved by the Department of the Youth Authority as an appropriate place for the detention of minors so transferred.

(c) A minor who is either found not to be a fit and proper subject to be dealt with under the juvenile court law or who will be transferred to a court of criminal jurisdiction pursuant to Section 707.01, at the time of transfer to a court of criminal jurisdiction or at the conclusion of the fitness hearing, as the case may be, shall be entitled to be released on bail or on his or her own recognizance upon the same circumstances, terms, and conditions as an adult who is alleged to have committed the same offense.

(d) A minor 14 years of age or older who is taken into temporary custody by a peace officer on the basis of being a person described by Section 602, and who, in the reasonable belief of the peace officer, presents a serious security risk of harm to self or others, may be securely detained in a law enforcement facility that contains a lockup for adults, if all of the following conditions are met:

(1) The minor is held in temporary custody for the purpose of investigating the case, facilitating release of the minor to a parent or guardian, or arranging transfer of the minor to an appropriate juvenile facility.

(2) The minor is detained in the law enforcement facility for a period that does not exceed six hours except as provided in subdivision (g).

(3) The minor is informed at the time he or she is securely detained of the purpose of the secure detention, of the length of time the secure detention is expected to last, and of the maximum six-hour period the secure detention is authorized to last. In the event an extension is granted pursuant to subdivision (g), the minor shall be informed of the length of time the extension is expected to last.

(4) Contact between the minor and adults confined in the facility is restricted in accordance with Section 208.

(5) The minor is adequately supervised.

(6) A log or other written record is maintained by the law enforcement agency showing the offense which is the basis for the secure detention of the minor in the facility, the reasons and circumstances forming the basis for the decision to place the minor in secure detention, and the length of time the minor was securely detained.

Any other minor who is taken into temporary custody by a peace officer on the basis that the minor is a person described by Section 602, may be taken to a law enforcement facility that contains a lockup for adults and may be held in temporary custody in the facility for the purposes of investigating the case, facilitating the release of the minor to a parent or guardian, or arranging for the transfer of the

minor to an appropriate juvenile facility. However, while in the law enforcement facility, the minor may not be securely detained and shall be supervised in a manner so as to ensure that there will be no contact with adults in custody in the facility. If the minor is held in temporary, nonsecure custody within the facility, the peace officer shall exercise one of the dispositional options authorized by Sections 626 and 626.5 without unnecessary delay and, in every case, within six hours.

"Law enforcement facility," as used in this subdivision, includes a police station or a sheriff's station, but does not include a jail, as defined in subdivision (i).

(e) The Department of the Youth Authority shall assist law enforcement agencies, probation departments, and courts with the implementation of this section by doing all of the following:

(1) The Department of the Youth Authority shall advise each law enforcement agency, probation department, and court affected by this section as to its existence and effect.

(2) The Department of the Youth Authority shall make available and, upon request, shall provide technical assistance to each governmental agency that reported the confinement of a minor in a jail or lockup in calendar year 1984 or 1985. The purpose of this technical assistance is to develop alternatives to the use of jails or lockups for the confinement of minors. These alternatives may include secure or nonsecure facilities located apart from an existing jail or lockup; improved transportation or access to juvenile halls or other juvenile facilities; and other programmatic alternatives recommended by the Department of the Youth Authority. The technical assistance shall take any form the Department of the Youth Authority deems appropriate for effective compliance with this section.

(f) The Department of the Youth Authority may exempt a county that does not have a juvenile hall, or may exempt an offshore law enforcement facility, from compliance with this section for a reasonable period of time, until December 1, 1992, for the purpose of allowing the county or the facility to develop alternatives to the use of jails and lockups for the confinement of minors, if all of the following conditions are met:

(1) The county or the facility submits a written request to the Department of the Youth Authority for an extension of time to comply with this section.

(2) The Department of the Youth Authority agrees to make available, and the county or the facility agrees to accept, technical assistance to develop alternatives to the use of jails and lockups for the confinement of minors during the period of the extension.

(3) The county or the facility requesting the extension submits to the Department of the Youth Authority a written plan for full compliance with this section by September 1, 1987.

(g) (1) Under the limited conditions of inclement weather, acts of God, or natural disasters that result in the temporary unavailability

of transportation, an extension of the six-hour maximum period of detention set forth in paragraph (2) of subdivision (d) may be granted to a county by the Department of the Youth Authority. The extensions may only be granted by the Department of the Youth Authority on an individual, case-by-case basis. If the extension is granted, the detention of minors under those conditions shall not exceed the duration of the special conditions, plus a period reasonably necessary to accomplish transportation of the minor to a suitable juvenile facility, not to exceed six hours after the restoration of available transportation.

A county that receives an extension under this paragraph shall comply with the requirements set forth in subdivision (d). The county also shall provide a written report to the Department of the Youth Authority that specifies when the inclement weather, act of God, or natural disaster ceased to exist, when transportation availability was restored, and when the minor was delivered to a suitable juvenile facility. In the event that the minor was detained in excess of 24 hours, the Department of the Youth Authority shall verify the information contained in the report.

(2) Under the limited condition of temporary unavailability of transportation, an extension of the six-hour maximum period of detention set forth in paragraph (2) of subdivision (d) may be granted by the Department of the Youth Authority to an offshore law enforcement facility. The extension may be granted only by the Department of the Youth Authority on an individual, case-by-case basis. If the extension is granted, the detention of minors under those conditions shall extend only until the next available mode of transportation can be arranged.

An offshore law enforcement facility that receives an extension under this paragraph shall comply with the requirements set forth in subdivision (d). The facility also shall provide a written report to the Department of the Youth Authority that specifies when the next mode of transportation became available, and when the minor was delivered to a suitable juvenile facility. In the event that the minor was detained in excess of 24 hours, the Department of the Youth Authority shall verify the information contained in the report.

(3) At least annually, the Department of the Youth Authority shall review and report on extensions sought and granted under this subdivision. If, upon that review, the Department of the Youth Authority determines that a county has sought one or more extensions resulting in the excessive confinement of minors in adult facilities, or that a county is engaged in a pattern and practice of seeking extensions, it shall require the county to submit a detailed explanation of the reasons for the extensions sought and an assessment of the need for a conveniently located and suitable juvenile facility. Upon receiving this information, the Department of the Youth Authority shall make available, and the county shall accept, technical assistance for the purpose of developing suitable alternatives to the confinement of minors in adult lockups. Based

upon the information provided by the county, the Department of the Youth Authority also may place limits on, or refuse to grant, future extensions requested by the county under this subdivision.

(h) Any county that did not have a juvenile hall on January 1, 1987, may establish a special purpose juvenile hall, as defined by the Department of the Youth Authority, for the detention of minors for a period not to exceed 96 hours. Any county that had a juvenile hall on January 1, 1987, also may establish, in addition to the juvenile hall, a special purpose juvenile hall. The Department of the Youth Authority shall prescribe minimum standards for any such facility.

(i) (1) "Jail," as used in this chapter, means any building that contains a locked facility administered by a law enforcement or governmental agency, the purpose of which is to detain adults who have been charged with violations of criminal law and are pending trial, or to hold convicted adult criminal offenders sentenced for less than one year.

(2) "Lockup," as used in this chapter, means any locked room or secure enclosure under the control of a sheriff or other peace officer which is primarily for the temporary confinement of adults upon arrest.

(3) "Offshore law enforcement facility," as used in this section, means a sheriff's station containing a lockup for adults that is located on an island located at least 22 miles from the California coastline.

(j) Nothing in this section shall be deemed to prevent a peace officer or employee of an adult detention facility or jail from escorting a minor into the detention facility or jail for the purpose of administering an evaluation, test, or chemical test pursuant to Section 23157 of the Vehicle Code, if all of the following conditions are met:

(1) The minor is taken into custody by a peace officer on the basis of being a person described by Section 602 and there is no equipment for the administration of the evaluation, test, or chemical test located at a juvenile facility within a reasonable distance of the point where the minor was taken into custody.

(2) The minor is not locked in a cell or room within the adult detention facility or jail, is under the continuous, personal supervision of a peace officer or employee of the detention facility or jail, and is not permitted to come in contact or remain in contact with in-custody adults.

(3) The evaluation, test, or chemical test administered pursuant to Section 23157 of the Vehicle Code is performed as expeditiously as possible, so that the minor is not delayed unnecessarily within the adult detention facility or jail. Upon completion of the evaluation, test, or chemical test, the minor shall be removed from the detention facility or jail as soon as reasonably possible. No minor shall be held in custody in an adult detention facility or jail under the authority of this paragraph in excess of two hours.

(k) This section shall become operative on July 1, 1995.

SEC. 3. Section 707 of the Welfare and Institutions Code is

amended to read:

707. (a) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at the hearing.

(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purpose of robbery.
(11) Kidnapping with bodily harm.
(12) Attempted murder.
(13) Assault with a firearm or destructive device.
(14) Assault by any means of force likely to produce great bodily injury.
(15) Discharge of a firearm into an inhabited or occupied building.
(16) Any offense described in Section 1203.09 of the Penal Code.
(17) Any offense described in Section 12022.5 of the Penal Code.
(18) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.
(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.
(20) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.
(21) Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.
(22) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.
(23) Torture as described in Sections 206 and 206.1 of the Penal Code.
(24) Aggravated mayhem as described in Section 205 of the Penal Code.
(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:
(1) The degree of criminal sophistication exhibited by the minor.
(2) Whether the minor can be rehabilitated prior to the

expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offenses alleged to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

SEC. 3.5. Section 707.01 is added to the Welfare and Institutions Code, to read:

707.01. (a) If a minor is found an unfit subject to be dealt with under the juvenile court law pursuant to Section 707, then the following shall apply:

(1) The jurisdiction of the juvenile court with respect to any previous adjudication resulting in the minor being made a ward of the juvenile court that did not result in the minor's commitment to the Youth Authority shall not terminate, unless a hearing is held pursuant to Section 785 and the jurisdiction of the juvenile court over the minor is terminated.

(2) The jurisdiction of the juvenile court and the Youth Authority with respect to any previous adjudication resulting in the minor being made a ward of the juvenile court that resulted in the minor's commitment to the Youth Authority shall not terminate.

(3) All petitions pending against the minor shall be transferred to the court of criminal jurisdiction where one of the following applies:

(A) Jeopardy has not attached and the minor was 16 years of age or older at the time he or she is alleged to have violated the criminal statute or ordinance.

(B) Jeopardy has not attached and the minor is alleged to have violated a criminal statute for which he or she may be presumed or may be found to be not a fit and proper subject to be dealt with under the juvenile court law.

(4) All petitions pending against the minor shall be disposed of in the juvenile court pursuant to the juvenile court law, where one of the following applies:

(A) Jeopardy has attached.

(B) The minor was under 16 years of age at the time he or she is alleged to have violated a criminal statute for which he or she may not be presumed or may not be found to be not a fit and proper

subject to be dealt with under the juvenile court law.

(5) If, subsequent to a finding that a minor is an unfit subject to be dealt with under the juvenile court law, the minor is convicted of the violations which were the subject of the proceeding that resulted in a finding of unfitness, a new petition or petitions alleging the violation of any law or ordinance defining crime which would otherwise cause the minor to be a person described in Section 602 committed by the minor prior to or after the finding of unfitness need not be filed in the juvenile court if one of the following applies:

(A) The minor was 16 years of age or older at the time he or she is alleged to have violated a criminal statute or ordinance.

(B) The minor is alleged to have violated a criminal statute for which he or she may be presumed or may be found to be not a fit and proper subject to be dealt with under the juvenile court law.

(6) Subsequent to a finding that a minor is an unfit subject to be dealt with under the juvenile court law, which finding was based solely on either or both the minor's previous delinquent history or a lack of success of previous attempts by the juvenile court to rehabilitate the minor, and the minor was not convicted of the offense, a new petition or petitions alleging the violation of any law or ordinance defining crime which would otherwise cause the minor to be a person described in Section 602 committed by the minor prior to or after the finding of unfitness need not be filed in the juvenile court if one of the following applies:

(A) The minor was 16 years of age or older at the time he or she is alleged to have violated a criminal statute or ordinance.

(B) The minor is alleged to have violated a criminal statute for which he or she may be presumed or may be found to be not a fit and proper subject to be dealt with under the juvenile court law.

(7) If, subsequent to a finding that a minor is an unfit subject to be dealt with under the juvenile court law, the minor is not convicted of the violations which were the subject of the proceeding that resulted in a finding of unfitness and the finding of unfitness was not based solely on either or both the minor's previous delinquent history or a lack of success of previous attempts by the juvenile court to rehabilitate the minor, a new petition or petitions alleging the violation of any law or ordinance defining a crime which would otherwise cause the minor to be a person described in Section 602 committed by the minor prior to or after the finding of unfitness shall be first filed in the juvenile court. This subparagraph does not preclude the prosecuting attorney from seeking to find the minor unfit pursuant to this section in the subsequent petition.

(b) As to a violation referred to in paragraph (5) or (6) of subdivision (a), if a petition based on those violations has already been filed in the juvenile court, it shall be transferred to the court of criminal jurisdiction without any further proceedings.

(c) The probation officer shall not be required to investigate or submit a report regarding the fitness of a minor for any charge specified in paragraph (5) or (6) of subdivision (a) which is refiled

in the juvenile court.

(d) This section shall not be construed to affect the right to appellate review of a finding of unfitness or the duration of the jurisdiction of the juvenile court as specified in Section 607.

SEC. 4. Section 707.1 of the Welfare and Institutions Code is amended to read:

707.1. (a) If the minor is declared not a fit and proper subject to be dealt with under the juvenile court law, the district attorney, or other appropriate prosecuting officer may file an accusatory pleading against the minor in a court of criminal jurisdiction. The case shall proceed from that point according to the laws applicable to a criminal case. If a prosecution has been commenced in another court but has been suspended while juvenile court proceedings are being held, it shall be ordered that the proceedings upon that prosecution shall resume.

(b) (1) The juvenile court, as to a minor alleged to have committed an offense described in subdivision (b) of Section 707 and who has been declared not a fit and proper subject to be dealt with under the juvenile court law, or as to a minor for whom charges in a petition or petitions in the juvenile court will be transferred to a court of criminal jurisdiction pursuant to Section 707.01, or as to a minor whose case has been filed directly in or transferred to a court of criminal jurisdiction pursuant to Section 707.01, may order the minor to be delivered to the custody of the sheriff upon a finding that the presence of the minor in the juvenile hall would endanger the safety of the public or be detrimental to the other inmates detained in the juvenile hall. Other minors declared not fit and proper subjects to be dealt with under the juvenile court law, if detained, shall remain in the juvenile hall pending final disposition by the criminal court or until they attain the age of 18, whichever occurs first.

(2) Upon attainment of the age of 18 such a person who is detained in juvenile hall shall be delivered to the custody of the sheriff unless the court finds that it is in the best interests of the person and the public that he or she be retained in juvenile hall. If a hearing is requested by the person, the transfer shall not take place until after the court has made its findings.

(3) When a person under 18 years of age is detained pursuant to this section in a facility in which adults are confined the detention shall be in accordance with the conditions specified in subdivision (b) of Section 207.1.

(4) A minor found not a fit and proper subject to be dealt with under the juvenile court law shall, upon the conclusion of the fitness hearing, be entitled to release on bail or on his or her own recognizance on the same circumstances, terms, and conditions as an adult alleged to have committed the same offense.

SEC. 5. Section 707.2 of the Welfare and Institutions Code is amended to read:

707.2. This section applies only to minors who are eligible for

commitment to the Youth Authority. Prior to sentence, the court of criminal jurisdiction may remand a minor to the custody of the Youth Authority for a period not to exceed 90 days for the purpose of evaluation and report concerning the minor's amenability to training and treatment offered by the Youth Authority. No minor who was under the age of 18 years when he or she committed any criminal offense and who has been found not a fit and proper subject to be dealt with under the juvenile court law, or who was charged directly in or whose case was transferred to a court of criminal jurisdiction pursuant to Section 707.01, shall be sentenced to the state prison unless he or she has first been remanded to the custody of the Youth Authority for evaluation and report pursuant to this section.

The need to protect society, the nature and seriousness of the offense, the interests of justice, the suitability of the minor to the training and treatment offered by the Youth Authority, and the needs of the minor shall be the primary considerations in the court's determination of the appropriate disposition for the minor.

SEC. 6. Section 785 is added to the Welfare and Institutions Code, to read:

785. (a) Where a minor is a ward of the juvenile court, the wardship did not result in the minor's commitment to the Youth Authority, and the minor is found not to be a fit and proper subject to be dealt with under the juvenile court law with respect to a subsequent allegation of criminal conduct, any parent or other person having an interest in the minor, or the minor, through a properly appointed guardian, the prosecuting attorney, or probation officer, may petition the court in the same action in which the minor was found to be a ward of the juvenile court for a hearing for an order to terminate or modify the jurisdiction of the juvenile court. The court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to those persons and by the means prescribed by Sections 776 and 779, or where the means of giving notice is not prescribed by those sections, then by such means as the court prescribes.

(b) The petition shall be verified and shall state why jurisdiction should be terminated or modified in concise language.

(c) In determining whether or not the wardship shall terminate or be modified, the court shall be guided by the policies set forth in Section 202.

(d) In addition to its authority under this chapter, the Judicial Council shall adopt rules providing criteria for the consideration of the juvenile court in determining whether or not to terminate or modify jurisdiction pursuant to this section.

SEC. 7. Section 800 of the Welfare and Institutions Code is amended to read:

800. (a) A judgment in a proceeding under Section 601 or 602 may be appealed from, by the minor, in the same manner as any final judgment, and any subsequent order may be appealed from, by the minor, as from an order after judgment. Pending appeal of the order

or judgment, the granting or refusal to order release shall rest in the discretion of the juvenile court. The appeal shall have precedence over all other cases in the court to which the appeal is taken.

A ruling on a motion to suppress pursuant to Section 700.1 shall be reviewed on appeal even if the judgment is predicated upon an admission of the allegations of the petition.

A judgment or subsequent order entered by a referee shall become appealable whenever proceedings pursuant to Section 252, 253, or 254 have become completed or, if proceedings pursuant to Section 252, 253, or 254 are not initiated, when the time for initiating the proceedings has expired.

(b) An appeal may be taken by the people from any of the following:

(1) A ruling on a motion to suppress pursuant to Section 700.1 even if the judgment is a dismissal of the petition or any count or counts of the petition. However, no appeal by the people shall lie as to any count which, if the people are successful, will be the basis for further proceedings subjecting any person to double jeopardy.

(2) An order made after judgment entered pursuant to Section 777 or 785.

(3) An order modifying the jurisdictional finding by reducing the degree of the offense or modifying the offense to a lesser offense.

(4) An order or judgment dismissing or otherwise terminating the action before the minor has been placed in jeopardy, or where the minor has waived jeopardy. If, pursuant to this paragraph, the people prosecute an appeal of the decision or any review of that decision, it shall be binding upon the people and they shall be prohibited from refiling the case which was appealed.

(5) The imposition of an unlawful order at a dispositional hearing, whether or not the court suspends the execution of the disposition.

(c) Nothing contained in this section shall be construed to authorize an appeal from an order granting probation. Instead, the people may seek appellate review of any grant of probation, whether or not the court imposes disposition, by means of a petition for a writ of mandate or prohibition which is filed within 60 days after probation is granted. The review of any grant of probation shall include review of any order underlying the grant of probation.

(d) An appellant unable to afford counsel, shall be provided a free copy of the transcript in any appeal.

(e) The record shall be prepared and transmitted immediately after filing of the notice of appeal, without advance payment of fees. If the appellant is able to afford counsel, the county may seek reimbursement for the cost of the transcripts under subdivision (c) of Section 68511.3 of the Government Code as though the appellant had been granted permission to proceed in forma pauperis.

(f) All appeals shall be initiated by the filing of notice of appeal in conformity with the requirements of Section 1240.1 of the Penal Code.

SEC. 8. If both this bill and AB 3565 are enacted and become

effective on January 1, 1995, and this bill is chaptered last, Section 5 of this bill shall not become operative, and Section 707.2 of the Welfare and Institutions Code, as amended by AB 3565, shall become operative.

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 449

An act to amend Section 707.2 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 9, 1994. Filed with Secretary of State September 9, 1994.]

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

SECTION 1. Section 707.2 of the Welfare and Institutions Code is amended to read:

707.2. Prior to sentence and after considering a recommendation on the issue which shall be made by the probation department, the court of criminal jurisdiction may remand the minor to the custody of the Department of the Youth Authority for a period not to exceed 90 days for the purpose of evaluation and report concerning his or her amenability to training and treatment offered by the Department of the Youth Authority. If the court decides not to remand the minor to the custody of the Department of the Youth Authority, the court shall make a finding on the record that the amenability evaluation is not necessary. However, a court of criminal jurisdiction shall not sentence any minor who was under the age of 16 years when he or she committed any criminal offense to the state prison unless he or she has first been remanded to the custody of the Department of the Youth Authority for evaluation and report pursuant to this section.

The need to protect society, the nature and seriousness of the offense, the interests of justice, and the needs of the minor shall be the primary considerations in the court's determination of the appropriate disposition for the minor.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 450

An act to amend Sections 653 and 653.5 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 9, 1994. Filed with Secretary of State September 9, 1994.]

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

SECTION 1. Section 653 of the Welfare and Institutions Code is amended to read:

653. Whenever any person applies to the probation officer or the district attorney in accordance with subdivision (e) of Section 601.3, to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 601 and setting forth facts in support thereof. The probation officer or the district attorney, in consultation with the probation officer, shall immediately make any investigation he or she deems necessary to determine whether proceedings in the juvenile court should be commenced.

SEC. 2. Section 653.5 of the Welfare and Institutions Code, as amended by Section 15 of Chapter 1125 of the Statutes of 1993, is amended to read:

653.5. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer shall immediately make any investigation he or she deems necessary to determine whether proceedings in the juvenile court shall be commenced.

(b) Except as provided in subdivision (c), if the probation officer

determines that proceedings pursuant to Section 650 should be commenced to declare a person to be a ward of the juvenile court on the basis that he or she is a person described in Section 602, the probation officer shall cause the affidavit to be taken to the prosecuting attorney.

(c) Notwithstanding subdivision (b), the probation officer shall cause the affidavit to be taken within 48 hours to the prosecuting attorney in all of the following cases:

(1) If it appears to the probation officer that the minor has been referred to the probation officer for any violation of an offense listed in subdivision (b) of Section 707.

(2) If it appears to the probation officer that the minor is under 16 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer.

(3) If it appears to the probation officer that the minor was 16 years of age or older at the date of the offense and that the offense constitutes a felony referral to the probation officer.

(4) If it appears to the probation officer that the minor has been referred to the probation officer for the sale or possession for sale of a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(5) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(6) If it appears to the probation officer that the minor was 14 years of age or older at the date of the offense and the offense for which the referral was made constitutes a violation of Section 487h of the Penal Code or Section 10851 of the Vehicle Code.

(7) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 186.22 of the Penal Code.

(8) If it appears to the probation officer that the minor has previously been placed in a program of informal probation pursuant to Section 654.

(9) If it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds one thousand dollars ($1,000). For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 729.6 and "restitution" in subdivision (d) of Section 729.6 shall apply.

Except for offenses listed in paragraph (5), the provisions of subdivision (c) shall not apply to a narcotics and drug offense set forth in Section 1000 of the Penal Code.

The prosecuting attorney shall within his or her discretionary power institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 and

Section 26500 of the Government Code. However, if it appears to the prosecuting attorney that the affidavit was not properly referred, that the offense for which the minor was referred should be charged as a misdemeanor, or that the minor may benefit from a program of informal supervision, he or she shall refer the matter to the probation officer for whatever action the probation officer may deem appropriate.

(d) In all matters where the minor is not in custody and is already a ward of the court or a probationer under Section 602, the prosecuting attorney, within five judicial days of receipt of the affidavit from the probation officer, shall institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 of this code and Section 26500 of the Government Code, unless it appears to the prosecuting attorney that the affidavit was not properly referred or that the offense for which the minor was referred requires additional substantiating information, in which case he or she shall immediately notify the probation officer of what further action he or she is taking.

(e) This section shall remain in effect only until January 1, 1997, and as of that date is repealed.

SEC. 3. Section 653.5 of the Welfare and Institutions Code, as added by Section 16 of Chapter 1125 of the Statutes of 1993, is amended to read:

653.5. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer shall immediately make any investigation he or she deems necessary to determine whether proceedings in the juvenile court shall be commenced.

(b) Except as provided in subdivision (c), if the probation officer determines that proceedings pursuant to Section 650 should be commenced to declare a person to be a ward of the juvenile court on the basis that he or she is a person described in Section 602, the probation officer shall cause the affidavit to be taken to the prosecuting attorney.

(c) Notwithstanding the provisions of subdivision (b), the probation officer shall cause the affidavit to be taken within 48 hours to the prosecuting attorney in all of the following cases:

(1) If it appears to the probation officer that the minor has been referred to the probation officer for any violation of an offense listed in subdivision (b) of Section 707.

(2) If it appears to the probation officer that the minor is under 16 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer.

(3) If it appears to the probation officer that the minor was 16 years of age or older at the date of the offense and that the offense

constitutes a felony referral to the probation officer.

(4) If it appears to the probation officer that the minor has been referred to the probation officer for the sale or possession for sale of a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(5) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(6) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 186.22 of the Penal Code.

(7) If it appears to the probation officer that the minor has previously been placed in a program of informal probation pursuant to Section 654.

(8) If it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds one thousand dollars ($1,000). For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 729.6 and "restitution" in subdivision (d) of Section 729.6 shall apply.

Except for offenses listed in paragraph (5), the provisions of subdivision (c) shall not apply to a narcotics and drug offense set forth in Section 1000 of the Penal Code.

The prosecuting attorney shall within his or her discretionary power institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 and Section 26500 of the Government Code. However, if it appears to the prosecuting attorney that the affidavit was not properly referred, that the offense for which the minor was referred should be charged as a misdemeanor, or that the minor may benefit from a program of informal supervision, he or she shall refer the matter to the probation officer for whatever action the probation officer may deem appropriate.

(d) In all matters where the minor is not in custody and is already a ward of the court or a probationer under Section 602, the prosecuting attorney, within five judicial days of receipt of the affidavit from the probation officer, shall institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 of this code and Section 26500 of the Government Code, unless it appears to the prosecuting attorney that the affidavit was not properly referred or that the offense for which the minor was referred requires additional substantiating information, in which case he or she shall immediately notify the probation officer of what further action he or she is taking.

(e) This section shall become operative on January 1, 1997.

SEC. 4. Notwithstanding Section 17610 of the Government Code,

if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 451

An act to amend Sections 186.22, 1203, 1203.1, 12021, 12026.2, 12070, 12072, 12076, 12078, 12084, and 12101 of the Penal Code, and to amend Section 8101 of the Welfare and Institutions Code, relating to firearms.

[Approved by Governor September 9, 1994. Filed with Secretary of State September 9, 1994.]

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

SECTION 1. Section 186.22 of the Penal Code, as amended by Chapter 47 of the Statutes of 1994, is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or 2 or 3 years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are

circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(7) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(8) The intimidation of witnesses and victims, as defined in Section 136.1.

(9) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).

(10) Grand theft of any vehicle, trailer, or vessel, as described in

Section 487h.

(11) Burglary, as defined in Section 459.

(12) Rape, as defined in Section 261.

(13) Looting, as defined in Section 463.

(14) Moneylaundering, as defined in Section 186.10.

(15) Kidnapping, as defined in Section 207.

(16) Mayhem, as defined in Section 203.

(17) Aggravated mayhem, as defined in Section 205.

(18) Torture, as defined in Section 206.

(19) Felony extortion, as defined in Sections 518 and 520.

(20) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(21) Carjacking, as defined in Section 215.

(22) The sale, delivery, or transfer of a firearm as described in Section 12072.

(23) Possession of a pistol, revolver, or other firearm capable of being concealed upon the person in violation of paragraph (1) of subdivision (a) of Section 12101.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (23), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall remain in effect only until January 1, 1997, and on that date is repealed.

SEC. 2. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. As used in this code, "conditional sentence" means the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to the conditions established by the court without the supervision of the probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) Except as provided in subdivision (j), if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her

recommendations as to the granting or denying of probation and the conditions of probation, if granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in the report his or her recommendation of the amount the defendant should be required to pay as a restitution fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his or her report a recommendation as to whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund. The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or, upon request of the defendant or prosecuting attorney, nine days, prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered the report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) If a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person which could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a

continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and who was armed with the weapon at either of those times.

(2) Any person who used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.

(B) The person used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machine gun under Section 12220, or a silencer under Section 12520.

(12) Any person who is convicted of violating Section 8101 of the Welfare and Institutions Code.

(13) Any person who is described in paragraph (2) or (3) of subdivision (g) of Section 12072.

(f) When probation is granted in a case which comes within subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to Section 13967 of the Government Code in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in Section 13967 of the Government Code.

(h) If a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement if the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4) and the probationer has reimbursed the county that has jurisdiction over his or her probation case the reasonable costs of processing his or her request for interstate compact supervision. The amount and method of reimbursement shall be in accordance with Section 1203.1b.

(j) In any court where a county financial evaluation officer is

available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court and as stated in the order, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

SEC. 3. Section 1203.1 of the Penal Code is amended to read:

1203.1. (a) The court, or judge thereof, in the order granting probation, may suspend the imposing, or the execution, of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case.

However, where the maximum possible term of the sentence is five years or less, then the period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years. The following shall apply to this subdivision:

(1) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case.

(2) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither.

(3) The court shall provide for restitution in proper cases.

(4) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation.

(b) The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. Any restitution payment received by a probation department in the form of cash or money order shall be forwarded to the victim within 30 days from the date the payment is received by the department. Any restitution payment received by a probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received by the department, provided, that payment need not be forwarded to a victim until 180 days from the date the first payment is received, if the restitution payments for that victim received by the probation department total less than fifty dollars ($50). In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any

restitution payment received by a probation department shall be forwarded to multiple victims when it is cost effective to do so, but in no event shall restitution disbursements be delayed beyond 180 days from the date the payment is received by the probation department.

(c) In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in the road camp, farm, or other public work instead of in jail. In this case, Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work. Each county board of supervisors may fix the scale of compensation of the adult probationers in that county.

(d) In all cases of probation the court may require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report them to the probation officer and apply those earnings as directed by the court.

(e) The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code.

(f) In all cases in which, as a condition of probation, a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve his or her sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

(g) (1) The court and prosecuting attorney shall consider whether any defendant who has been convicted of a nonviolent or nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the removal of graffiti in the performance of the community service. For the purpose of this subdivision, a nonserious offense shall not include the following:

(A) Offenses in violation of the Dangerous Weapons' Control Law (Chapter 1 (commencing with Section 12000) of Title 2 of Part 4).

(B) Offenses involving the use of a dangerous or deadly weapon, including all violations of Section 417.

(C) Offenses involving the use or attempted use of violence against the person of another or involving injury to a victim.

(D) Offenses involving annoying or molesting children.

(2) Notwithstanding subparagraph (A) of paragraph (1), any person who violates Section 12101 shall be ordered to perform not less than 100 hours and not more than 500 hours of community

service as a condition of probation.

(3) The court and the prosecuting attorney need not consider a defendant pursuant to paragraph (1) if the following circumstances exist:

(A) The defendant was convicted of any offense set forth in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) The judge believes that the public safety may be endangered if the person is ordered to do community service or the judge believes that the facts or circumstances or facts and circumstances call for imposition of a more substantial penalty.

(h) The probation officer or his or her designated representative shall consider whether any defendant who has been convicted of a nonviolent and nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through contact with local senior service organizations in the performance of the community service.

(i) Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

(j) The court may impose and require any or all of the above-mentioned terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation. However, upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, those of each probationer shall be taken and a record of them kept and preserved.

(k) Notwithstanding any other provisions of law to the contrary, except as provided in Sections 13967 and 13967.5 of the Government Code and Sections 1202.4, 1203.04, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund for the use and benefit of the county.

(*l*) If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 10 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 4. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 136.5, 140, 171b, 171c, 171d, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.2, 626.9, 646.9, or 12023, subdivision (b) or (d) of Section 12034, subdivision (a) of former Section 12100, Section 12320 or 12590, or Section 8101 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2)

or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under subdivision (c) no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction prior to January 1, 1991, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or

eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3), shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or an offense described in subdivision (b) of Section 1203.073, (2) is found to be a fit and proper subject to be dealt with under the juvenile court law, and (3) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code

or an offense described in subdivision (b) of Section 1203.073 shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a protective order as defined in Section 6218 of the Family Code, is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code. However, this subdivision does not apply if the firearm is received as part of the disposition of community property pursuant to Division 7 (commencing with Section 2500) of the Family Code.

SEC. 5. Section 12026.2 of the Penal Code is amended to read:

12026.2. (a) Section 12025 does not apply to or affect any of the following:

(1) The possession of a firearm by an authorized participant in a motion picture, television, or video production or entertainment event when the participant lawfully uses the firearm as part of that production or event or while going directly to, or coming directly from, that production or event.

(2) The possession of a firearm in a locked container by a member of any club or organization, organized for the purpose of lawfully collecting and lawfully displaying pistols, revolvers, or other firearms, while the member is at meetings of the clubs or organizations or while going directly to, and coming directly from,

those meetings.

(3) The transportation of a firearm by a participant when going directly to, or coming directly from, a recognized safety or hunter safety class, or a recognized sporting event involving that firearm.

(4) The transportation of a firearm by a person listed in Section 12026 directly between any of the places mentioned in Section 12026.

(5) The transportation of a firearm by a person when going directly to, or coming directly from, a fixed place of business or private residential property for the purpose of the lawful repair or the lawful transfer, sale, or loan of that firearm.

(6) The transportation of a firearm by a person listed in Section 12026 when going directly from the place where that person lawfully received that firearm to that person's place of residence or place of business or to private property owned or lawfully possessed by that person.

(7) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show, swap meet, or similar event to which the public is invited, for the purpose of displaying that firearm in a lawful manner.

(8) The transportation of a firearm by an authorized employee or agent of a supplier of firearms when going directly to, or coming directly from, a motion picture, television, or video production or entertainment event for the purpose of providing that firearm to an authorized participant to lawfully use as a part of that production or event.

(9) The transportation of a firearm by a person when going directly to, or coming directly from, a target range, which holds a regulatory or business license, for the purposes of practicing shooting at targets with that firearm at that target range.

(10) The transportation of a firearm by a person when going directly to, or coming directly from, a place designated by a person authorized to issue licenses pursuant to Section 12050 when done at the request of the issuing agency so that the issuing agency can determine whether or not a license should be issued to that person to carry that firearm.

(11) The transportation of a firearm by a person when going directly to, or coming directly from, a law enforcement agency for the purpose of a lawful transfer, sale, or loan of that firearm pursuant to Section 12084.

(12) The transportation of a firearm by a person when going directly to, or coming directly from, a lawful camping activity for the purpose of having that firearm available for lawful personal protection while at the lawful campsite. This paragraph shall not be construed to override the statutory authority granted to the Department of Parks and Recreation or any other state or local governmental agencies to promulgate rules and regulations governing the administration of parks and campgrounds.

(13) The transportation of a firearm by a person in order to comply with subdivision (c) or (i) of Section 12078 as it pertains to

that firearm.

(14) The transportation of a firearm by a person in order to utilize subdivision (*l*) of Section 12078 as it pertains to that firearm.

(15) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show or event, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations for the purpose of lawfully transferring, selling, or loaning that firearm in accordance with subdivision (d) of Section 12072.

(b) In order for a firearm to be exempted under subdivision (a), while being transported to or from a place, the firearm shall be unloaded, kept in a locked container, as defined in subdivision (d), and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

(c) This section does not prohibit or limit the otherwise lawful carrying or transportation of a pistol, revolver, or other firearm capable of being concealed upon the person in accordance with this chapter.

(d) As used in this section, "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. The term "locked container" does not include the utility or glove compartment of a motor vehicle.

SEC. 6. Section 12070 of the Penal Code is amended to read:

12070. (a) No person shall sell, lease, or transfer firearms unless he or she has been issued a license pursuant to Section 12071. Any person violating this section is guilty of a misdemeanor.

(b) Subdivision (a) does not include any of the following:

(1) The sale, lease, or transfer of any firearm by a person acting pursuant to operation of law, a court order, or pursuant to the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure), or by a person who liquidates a personal firearm collection to satisfy a court judgment.

(2) A person acting pursuant to subdivision (e) of Section 186.22a or subdivision (c) of Section 12028.

(3) The sale, lease, or transfer of a firearm by a person who obtains title to the firearm by intestate succession or by bequest or as a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code, provided the person disposes of the firearm within 60 days of receipt of the firearm.

(4) The infrequent sale, lease, or transfer of firearms.

(5) The sale, lease, or transfer of used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at gun shows or events, as specified in subparagraph (B) of paragraph (1) of subdivision (b) of Section 12071, by a person other than a licensee or dealer, provided the person has a valid federal firearms license and a certificate of eligibility issued by the Department of Justice, as specified in Section 12071, and provided all

the sales, leases, or transfers fully comply with subdivision (d) of Section 12072. However, the person shall not engage in the sale, lease, or transfer of used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person at more than 12 gun shows or events in any calendar year and shall not sell, lease, or transfer more than 15 used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person at any single gun show or event. In no event shall the person sell more than 75 used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person in any calendar year.

A person described in this paragraph shall be known as a "Gun Show Trader."

The Department of Justice shall adopt regulations to administer this program and shall recover the full costs of administration from fees assessed applicants.

As used in this paragraph, the term "used firearm" means a firearm that has been sold previously at retail and is more than three years old.

(6) The activities of a law enforcement agency pursuant to Section 12084.

(7) Deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(8) The sale, delivery, or transfer of firearms by manufacturers or importers licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to dealers or wholesalers.

(9) Deliveries and transfers of firearms made pursuant to Section 12028, 12028.5, or 12030.

(10) The loan of a firearm for the purposes of shooting at targets, if the loan occurs on the premises of a target facility which holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(11) Sales, deliveries, or transfers of firearms by manufacturers, importers, or wholesalers licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(12) Sales, deliveries, or transfers of firearms by persons who reside outside this state and are licensed outside this state pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to wholesalers, manufacturers, or importers, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(13) Sales, deliveries, or transfers of firearms by wholesalers to dealers.

(14) Sales, deliveries, or transfers of firearms by persons who reside outside this state to persons licensed pursuant to Section 12071, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and the regulations issued pursuant thereto.

(15) Sales, deliveries, or transfers of firearms by persons who reside outside this state and are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to dealers, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(16) The delivery, sale, or transfer of an unloaded firearm by one wholesaler to another wholesaler if that firearm is intended as merchandise in the receiving wholesaler's business.

(17) The loan of an unloaded firearm or the loan of a firearm loaded with blank cartridges for use solely as a prop for a motion picture, television, or video production or entertainment or theatrical event.

(c) (1) As used in this section, "infrequent" means:

(A) For pistols, revolvers, and other firearms capable of being concealed upon the person, less than six transactions per calendar year. For this purpose, "transaction" means a single sale, lease, or transfer of any number of pistols, revolvers, or other firearms capable of being concealed upon the person.

(B) For firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, occasional and without regularity.

(2) As used in this section, "operation of law" includes, but is not limited to, any of the following:

(A) The executor or administrator of an estate, if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver, if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties, if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property between spouses pursuant to Section 850 of the Family Code.

(d) This section shall become operative on January 1, 1994.

SEC. 7. Section 12072 of the Penal Code is amended to read:

12072. (a) (1) No person, corporation, or firm shall knowingly supply, sell, or give possession or control of a firearm to any person within any of the classes prohibited by Section 12021 or 12021.1.

(2) No person, corporation, or dealer shall sell, deliver, or otherwise transfer a firearm to any person whom he or she has cause to believe to be within any of the classes prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(3) No person, corporation, or firm shall sell, loan, or transfer a firearm to a minor.

(b) No person licensed under Section 12071 shall sell, deliver, or transfer a pistol, revolver, or firearm capable of being concealed upon the person to any person under the age of 21 years or any other firearm to a person under the age of 18 years.

(c) No dealer, whether or not acting pursuant to Section 12082, shall deliver a firearm to a person, as follows:

(1) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(2) Unless unloaded and securely wrapped or unloaded and in a locked container.

(3) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age, as defined in Section 12071, to the dealer.

(4) Whenever the dealer is notified by the Department of Justice

that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearm safety certificate.

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, in order for a person to sell, loan, or transfer a firearm, the parties to the transaction shall complete the transaction through either of the following:

(1) A licensed dealer pursuant to Section 12082.

(2) A law enforcement agency pursuant to Section 12084.

(e) No person may commit an act of collusion relating to Article 8 (commencing with Section 12800) of Chapter 6. For purposes of this section and Section 12071, collusion may be proven by any one of the following factors:

(1) Answering a test applicant's questions during an objective test relating to basic firearms safety.

(2) Knowingly misgrading the examination.

(3) Providing an advance copy of the test to an applicant.

(4) Taking or allowing another person to take the basic firearms safety course for one who is the applicant for the basic firearms safety certificate.

(5) Allowing another to take the objective test for the applicant, purchaser, or transferee.

(6) Allowing others to give unauthorized assistance during the examination.

(7) Reference to materials during the examination and cheating by the applicant.

(8) Providing originals or photocopies of the objective test, or any version thereof, to any person other than as specified in subdivision (f) of Section 12805.

(f) (1) No wholesaler shall deliver, sell, or transfer a firearm to a person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and whose licensed premises are located in this state unless one of the following conditions is met:

(A) The person presents proof of licensure pursuant to Section 12071 to the wholesaler.

(B) The person presents proof that he or she is exempt from licensure under Section 12071 to the wholesaler, in which case the person also shall present proof that the transaction is also exempt from the provisions of subdivision (d).

(2) No importer or manufacturer who is licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto shall deliver, sell, or transfer a firearm to a person who is licensed pursuant to Chapter 44 (commencing with Section

921) of Title 18 of the United States Code and whose licensed premises are located in this state unless one of the following conditions is met:

(A) The person presents a proof of licensure pursuant to Section 12071 to the importer or manufacturer.

(B) The person presents proof that he or she is exempt from licensure under Section 12071 to the importer or manufacturer, in which case the person also shall present proof that the transaction is also exempt from the provisions of subdivision (d).

(g) (1) Except as provided in paragraph (2) or (3), a violation of this section is a misdemeanor.

(2) If any of the following circumstances apply, a violation of this section is punishable by imprisonment in the state prison for two, three, or four years:

(A) If the violation is of paragraph (1) of subdivision (a).

(B) If the defendant has a prior conviction of violating this section or former Section 12100 of this code or Section 8101 of the Welfare and Institutions Code.

(C) If the defendant has a prior conviction of violating any offense specified in subdivision (b) of Section 12021.1 or a violation of Section 12020, 12220, or 12520, or former Section 12560.

(D) If the defendant is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(E) A violation of this section by a person who actively participates in a "criminal street gang" as defined in Section 186.22.

(3) If any of the following circumstances apply, a violation of this section is punishable by imprisonment in the state prison, or in a county jail for a period not exceeding one year, or by a fine of not exceeding one thousand dollars ($1,000), or by both the fine and imprisonment:

(A) If the violation is of paragraph (2) of subdivision (a).

(B) A violation of subdivision (b) involving the delivery of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor.

(C) A violation of paragraph (3) of subdivision (a) involving the sale, loan, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor.

SEC. 7.5. Section 12072 of the Penal Code is amended to read:

12072. (a) (1) No person, corporation, or firm shall knowingly supply, sell, or give possession or control of any firearm to any person within any of the classes prohibited by Section 12021 or 12021.1.

(2) No person, corporation, or dealer shall sell, deliver, or otherwise transfer any firearm to any person whom he or she has cause to believe to be within any of the classes prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(3) No person, corporation, or firm shall sell, loan, or transfer any firearm to a minor.

(4) No person, corporation, or dealer shall sell, loan, or transfer any firearm to any person whom he or she knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to any person who is not the person actually being loaned the firearm, if the person, corporation, or dealer has either of the following:

(A) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the provisions of subdivision (d).

(B) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the requirements of any exemption to the provisions of subdivision (d).

(5) No person, corporation, or dealer shall acquire a firearm for the purpose of selling, transferring, or loaning the firearm, if the person, corporation, or dealer has either of the following:

(A) In the case of a dealer, intent to violate subdivision (b) or (c).

(B) In any other case, intent to avoid either of the following:

(i) The provisions of subdivision (d).

(ii) The requirements of any exemption to the provisions of subdivision (d).

(b) No person licensed under Section 12071 shall sell, deliver, or transfer any pistol, revolver, or firearm capable of being concealed upon the person to any person under the age of 21 years or any other firearm to a person under the age of 18 years.

(c) No dealer, whether or not acting pursuant to Section 12082, shall deliver a firearm to a person, as follows:

(1) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(2) Unless unloaded and securely wrapped or unloaded and in a locked container.

(3) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age, as defined in Section 12071, to the dealer.

(4) Whenever the dealer is notified by the Department of Justice

that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearm safety certificate.

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through either of the following:

(1) A licensed dealer pursuant to Section 12082.

(2) A law enforcement agency pursuant to Section 12084.

(e) No person may commit an act of collusion relating to Article 8 (commencing with Section 12800) of Chapter 6. For purposes of this section and Section 12071, collusion may be proven by any one of the following factors:

(1) Answering a test applicant's questions during an objective test relating to basic firearms safety.

(2) Knowingly misgrading the examination.

(3) Providing an advance copy of the test to an applicant.

(4) Taking or allowing another person to take the basic firearms safety course for one who is the applicant for the basic firearms safety certificate.

(5) Allowing another to take the objective test for the applicant, purchaser, or transferee.

(6) Allowing others to give unauthorized assistance during the examination.

(7) Reference to materials during the examination and cheating by the applicant.

(8) Providing originals or photocopies of the objective test, or any version thereof, to any person other than as specified in subdivision (f) of Section 12805.

(f) No person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code shall deliver, sell, or transfer a firearm to a person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and whose licensed premises are located in this state unless one of the following conditions is met:

(1) The person presents proof of licensure pursuant to Section 12071 to that person.

(2) The person presents proof that he or she is exempt from licensure under Section 12071 to that person, in which case the person also shall present proof that the transaction is also exempt from the provisions of subdivision (d).

(g) (1) Except as provided in paragraph (2) or (3), a violation of this section is a misdemeanor.

(2) If any of the following circumstances apply, a violation of this section shall be punished by imprisonment in the state prison for two,

three, or four years:

(A) If the violation is of paragraph (1) of subdivision (a).

(B) If the defendant has a prior conviction of violating this section or former Section 12100 of this code or Section 8101 of the Welfare and Institutions Code.

(C) If the defendant has a prior conviction of violating any offense specified in subdivision (b) of Section 12021.1 or of a violation of Section 12020, 12220, 12520, or of former Section 12560.

(D) If the defendant is in a prohibited class described in Section 12021 or 12021.1 or Section 8100 or 8103 of the Welfare and Institutions Code.

(E) A violation of this section by a person who actively participates in a criminal street gang as defined in Section 186.22.

(3) If any of the following circumstances apply, a violation of this section shall be punished by imprisonment in the state prison or in a county jail not to exceed one year, or by a fine not to exceed one thousand dollars ($1,000), or by both the fine and imprisonment:

(A) A violation of paragraph (2) of subdivision (a).

(B) A violation of paragraph (3) of subdivision (a) involving the sale, loan, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor.

(C) A violation of paragraph (4) of subdivision (a).

(D) A violation of paragraph (5) of subdivision (a).

(E) A violation of subdivision (b) involving the delivery of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor.

(F) A violation of paragraph (1), (3), (4), or (5) of subdivision (c) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(G) A violation of subdivision (d) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(H) A violation of subdivision (e).

SEC. 8. Section 12076 of the Penal Code is amended to read:

12076. (a) The purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(b) (1) Two copies of the original sheet of the register, on the date of sale, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(2) One copy of the original shall be mailed, postage prepaid, to

the chief of police, or other head of the police department, of the city or county wherein the sale is made. Where the sale is made in a district where there is no municipal police department, the copy of the original sheet shall be mailed to the sheriff of the county wherein the sale is made. This copy, as it relates to firearms, other than pistols, revolvers, or other firearms capable of being concealed upon the person, shall be destroyed within five days of receipt and no information shall be compiled therefrom.

(c) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

If the department determines that the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

If the department determines that the copies of the register submitted to it pursuant to subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser, or of the pistol, revolver, or other firearm to be purchased, transferred, or loaned, or if any fee required pursuant to subdivision (d) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (d), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased or transferred, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(d) The Department of Justice may charge the dealer a fee sufficient to reimburse all of the following:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by the amendments to Section 8103 of the Welfare and Institutions Code, made by the act which also added this paragraph.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by the amendments to Section 8104

of the Welfare and Institutions Code made by the act which also added this paragraph.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code created by the act that also added this paragraph.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by the act which added paragraph (2) to this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by the act which added paragraph (3) to this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by the act which added paragraph (4) to this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code created by the act that added paragraph (5) to this subdivision, and the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code created by the act which added paragraph (6) to this subdivision.

(e) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078.

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (d) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(f) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section and Sections 12289 and 12809.

(g) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the sale of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(h) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to subdivision (c) or (i) of Section 12078.

(i) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(j) As used in this section:

(1) "Purchaser" means the purchaser or transferee of a firearm or the person being loaned a firearm.

(2) "Purchase" means the purchase, loan, or transfer of a firearm.

(3) "Sale" means the sale, loan, or transfer of a firearm.

SEC. 8.5. Section 12076 of the Penal Code is amended to read:

12076. (a) The purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register

and any person violating any provision of this section is guilty of a misdemeanor.

(b) (1) Two copies of the original sheet of the register, on the date of sale, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(2) One copy of the original shall be mailed, postage prepaid, to the chief of police, or other head of the police department, of the city or county wherein the sale is made. Where the sale is made in a district where there is no municipal police department, the copy of the original sheet shall be mailed to the sheriff of the county wherein the sale is made. This copy, as it relates to firearms, other than pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of receipt and no information shall be compiled therefrom.

(3) A photocopy of the original shall be provided to the purchaser by the dealer.

(4) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer.

(c) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

If the department determines that the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

If the department determines that the copies of the register submitted to it pursuant to subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser, or of the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (d) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (d), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(d) The Department of Justice may charge the dealer a fee sufficient to reimburse all of the following:

(1) (A) The department for the cost of furnishing this

information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by the amendments to Section 8103 of the Welfare and Institutions Code, made by the act which also added this paragraph.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by the amendments to Section 8104 of the Welfare and Institutions Code made by the act which also added this paragraph.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code created by the act that also added this paragraph.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by the act which added paragraph (2) to this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by the act which added paragraph (3) to this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by the act which added paragraph (4) to this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code created by the act that also added this paragraph, and the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code created by the act which added paragraph (6) to this subdivision.

(e) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the

submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071.

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (d) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(f) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section and Sections 12289 and 12809.

(g) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale or transfer of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(h) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(i) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(j) As used in this section, the following definitions shall control:

(1) "Purchaser" means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) "Purchase" means the purchase, loan, or transfer of a firearm.

(3) "Sale" means the sale, loan, or transfer of a firearm.

(4) "Seller" means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 9. Section 12078 of the Penal Code is amended to read:

12078. (a) (1) The preceding provisions of this article, except subdivision (e) of Section 12076, do not apply to deliveries, transfers, or sales of firearms made to persons properly identified as full-time paid peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, provided that the peace officers are authorized by their employer to carry firearms while in the performance of their duties, nor to deliveries, transfers, or sales of firearms made to authorized representatives of cities, cities and counties, counties, state or federal governments for use by those governmental agencies. Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a peace officer who is authorized to carry firearms while in the performance of his or her duties, and authorizing the purchase or transfer. The certification shall be delivered to the seller or transferor at the time of purchase or transfer and the purchaser or transferee shall identify himself or herself as the person authorized in the certification. On the day the sale, delivery, or transfer is made, where a peace officer is receiving the firearm, and either a dealer is not the seller or transferor, or is not otherwise the person responsible for the delivery of the firearm, or the transfer or sale is not conducted through a law enforcement agency pursuant to Section 12084, the peace officer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the seller or transferor, the buyer or transferee, the firearm as is indicated in Section 12077, together with the original certification. On the day the sale, delivery, or transfer is made, where a dealer is the seller, transferor, or otherwise responsible for delivery of the firearm, the dealer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12077, together with the original certification. On the day the sale, delivery, or transfer is made, where the transfer is conducted pursuant to Section 12084, the law enforcement agency shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12084, together with the original certification. The reports which peace officers shall complete shall be provided to them by the department. No report need be submitted to the Department of Justice where a peace officer receiving the firearm received it from his or her employer in accordance with the applicable rules, regulations, or procedures of the employer.

(2) The preceding provisions of this article, except subdivision (e) of Section 12076, do not apply to deliveries, transfers, or sales of firearms made to peace officers as defined in Chapter 4.5

(commencing with Section 830) of Title 3 of Part 2 made pursuant to Section 10334 of the Public Contract Code. On the day the sale, delivery, or transfer is made, and a dealer is not the person responsible for the delivery of the firearm or the transfer or sale is not conducted through a law enforcement agency pursuant to Section 12084, the peace officer receiving the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the seller or transferor, the buyer or transferee, and the firearm as is indicated in Section 12077. On the day the sale, delivery, or transfer is made, where a dealer is responsible for delivery of the firearm, the dealer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12077. On the day the sale, delivery, or transfer is made where the transfer is conducted pursuant to Section 12084, the law enforcement agency shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12084. The reports which peace officers shall complete shall be the same as those set forth in paragraph (1) of this subdivision and shall be provided to them by the department.

(3) Subdivision (d) of Section 12072 does not apply to sales, deliveries, or transfers of firearms to authorized representatives of cities, cities and counties, counties, or state or federal governments for those governmental agencies where the entity is acquiring the weapon as part of an authorized, voluntary program where the entity is buying or receiving weapons from private individuals. Any weapons acquired pursuant to this subdivision shall be disposed of pursuant to the applicable provisions of Section 12028 or 12032.

(b) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(c) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family.

(2) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family and both of the following conditions are met:

(A) The person to whom the firearm is transferred shall, within 30 days of taking possession of the firearm, forward by prepaid mail or deliver in person to the Department of Justice, a report that

includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question. The report forms that individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(B) Prior to taking possession of the firearm, the person taking title to the firearm shall obtain a basic firearm safety certificate.

(3) As used in this subdivision, immediate family member means any one of the following relationships:

(A) Parent and child.

(B) Grandparent and grandchild.

(d) Subdivision (d) of Section 12072 shall not apply to the infrequent loan of firearms between persons who are personally known to each other for any lawful purpose, if the loan does not exceed 30 days in duration.

(e) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery of a firearm to a gunsmith for service or repair.

(f) Subdivision (d) of Section 12072 shall not apply to the sale, delivery, or transfer of firearms by persons who reside in this state to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(g) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent sale or transfer of a firearm, other than a pistol, revolver, or other firearm capable of being concealed upon the person, at auctions or similar events conducted by nonprofit mutual or public benefit corporations organized pursuant to the Corporations Code.

As used in this paragraph, the term "infrequent" shall not be construed to prohibit different local chapters of the same nonprofit corporation from conducting auctions or similar events, provided the individual local chapter conducts the auctions or similar events infrequently. It is the intent of the Legislature that different local chapters, representing different localities, be entitled to invoke the exemption created by this paragraph, notwithstanding the frequency with which other chapters of the same nonprofit corporation may conduct auctions of similar events.

(2) Subdivision (d) of Section 12072 shall not apply to the transfer of a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, if the firearm is donated for an auction or similar event described in paragraph (1) and the firearm is delivered to the nonprofit corporation immediately preceding, or contemporaneous with, the auction or similar event.

(3) The waiting period described in Sections 12071 and 12072 shall not apply to a dealer who delivers a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the

person, at an auction or similar event described in paragraph (1), as authorized by subparagraph (C) of paragraph (1) of subdivision (b) of Section 12071. Within 48 hours of the sale, delivery, or transfer, the dealer shall forward by prepaid mail to the Department of Justice a report of the same as is indicated in paragraph (3) of subdivision (a) of Section 12077.

(h) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm for the purposes of shooting at targets if the loan occurs on the premises of a target facility which holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(i) (1) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of firearms by operation of law if all the following conditions are met:

(A) The person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms.

(B) If the firearms are pistols, revolvers, or other firearms capable of being concealed upon the person, and the person is not a levying officer as defined in Section 481.140, 511.060, or 680.210 of the Code of Civil Procedure, the person shall, within 30 days of taking possession, deliver in person or forward by prepaid mail to the Department of Justice, a report of the same and the type of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports which individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(C) In the case of a transmutation of property between spouses made in accordance with Section 850 of the Family Code consisting of a pistol, revolver, or other firearm capable of being concealed upon the person, taking place on or after April 1, 1994, a basic firearm safety certificate shall be required prior to taking possession of the firearm.

(2) Subdivision (d) of Section 12072 shall not apply to a person who takes possession of a firearm by operation of law in a representative capacity who transfers ownership of the firearm to himself or herself in his or her individual capacity. In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, on and after April 1, 1994, that individual shall have a basic firearm safety certificate in order for the exemption set forth in this paragraph to apply.

(j) Subdivision (d) of Section 12072 shall not apply to deliveries, transfers, or returns of firearms made pursuant to Section 12028, 12028.5, or 12030.

(k) Section 12071 and subdivision (c) of Section 12072 shall not

apply to:

(1) The delivery, sale, or transfer of unloaded firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person by a dealer to another dealer upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(2) The delivery, sale, or transfer of unloaded firearms by dealers to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(3) The delivery, sale, or transfer of unloaded firearms to a wholesaler if the firearms are being returned to the wholesaler and are intended as merchandise in the wholesaler's business.

(4) The delivery, sale, or transfer of unloaded firearms by one dealer to another dealer if the firearms are intended as merchandise in the receiving dealer's business upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(5) The delivery, sale, or transfer of an unloaded firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer to himself or herself.

(6) The loan of an unloaded firearm by a dealer who also operates a target facility which holds a business or regulatory license on the premises of the building designated in the license or whose building designated in the license is on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, to a person at that target facility, club, or organization, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(*l*) A person who is exempt from subdivision (d) of Section 12072 or is otherwise not required by law to report his or her acquisition, ownership, or disposal of a pistol, revolver, or other firearm capable of being concealed upon the person or who moves out of this state with his or her pistol, revolver, or other firearm capable of being concealed upon the person may submit a report of the same to the Department of Justice in a format prescribed by the department.

(m) Subdivision (d) of Section 12072 shall not apply to the delivery, sale, or transfer of unloaded firearms to a wholesaler as merchandise in the wholesaler's business by manufacturers or importers licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, or by another wholesaler, if the delivery, sale, or transfer is made in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(n) (1) The waiting period described in Section 12071 or 12072 shall not apply to the delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer in either of the following situations:

(A) The dealer is delivering the firearm to another dealer and it

is not intended as merchandise in the receiving dealer's business.

(B) The dealer is delivering the firearm to himself or herself and it is not intended as merchandise in his or her business.

(2) In order for this subdivision to apply, both of the following shall occur:

(A) If the dealer is receiving the firearm from another dealer, the dealer receiving the firearm shall present proof to the dealer delivering the firearm that he or she is licensed pursuant to Section 12071.

(B) Whether the dealer is delivering, selling, or transferring the firearm to himself or herself or to another dealer, on the date that the delivery, sale, or transfer is made, the dealer delivering the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the purchaser or transferee as is indicated in paragraph (2) of subdivision (a) of Section 12077.

(o) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery, sale, or transfer of firearms regulated pursuant to Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275), if the delivery, sale, or transfer is conducted in accordance with the applicable provisions of Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275).

(p) (1) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor, with the express permission of the parent or legal guardian of the minor, if the loan does not exceed 30 days in duration, and is for a lawful purpose.

(2) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by a person who is not the parent or legal guardian of the minor if all of the following circumstances exist:

(A) The minor has the written consent of his or her parent or legal guardian that is presented at the time of, or prior to the time of, the loan, or is accompanied by his or her parent or legal guardian at the time the loan is made.

(B) The minor is being loaned the firearm for the purpose of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event.

(C) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(D) The duration of the loan does not, in any event, exceed 10 days.

(3) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian if both of the following circumstances exist:

(A) The minor is being loaned the firearm for the purposes of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(B) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event.

(4) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian.

(5) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her grandparent who is not the legal guardian of the minor if the transfer is done with the express permission of the parent or legal guardian of the minor.

(q) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a licensed hunter for use by that licensed hunter for a period of time not to exceed the duration of the hunting season for which that firearm is to be used.

(r) Subdivision (d) of Section 12072 shall not apply to the loan of an unloaded firearm or the loan of a firearm loaded with blank cartridges for use solely as a prop for a motion picture, television, or video production or entertainment or theatrical event.

(s) As used in this section:

(1) "Infrequent" has the same meaning as in paragraph (1) of subdivision (c) of Section 12070.

(2) "A person taking title or possession of firearms by operation of law" includes, but is not limited to, any of the following instances wherein an individual receives title to, or possession of, firearms:

(A) The executor or administrator of an estate if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or

680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property consisting of firearms pursuant to Section 850 of the Family Code.

(H) Firearms passing to a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code.

SEC. 9.5. Section 12078 of the Penal Code is amended to read:

12078. (a) (1) The preceding provisions of this article, except subdivision (e) of Section 12076, do not apply to deliveries, transfers, or sales of firearms made to persons properly identified as full-time paid peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, provided that the peace officers are authorized by their employer to carry firearms while in the performance of their duties, nor to deliveries, transfers, or sales of firearms made to authorized representatives of cities, cities and counties, counties, state or federal governments for use by those governmental agencies. Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a peace officer who is authorized to carry firearms while in the performance of his or her duties, and authorizing the purchase or transfer. The certification shall be delivered to the seller or transferor at the time of purchase or transfer and the purchaser or transferee shall identify himself or herself as the person authorized in the certification. On the day the sale, delivery, or transfer is made, where a peace officer is receiving the firearm, and either a dealer is not the seller or transferor, or is not otherwise the person responsible for the delivery of the firearm, or the transfer or sale is not conducted through a law enforcement agency pursuant to Section 12084, the peace officer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the seller or transferor, the buyer or transferee, the firearm as is indicated in Section 12077, together with the original certification. On the day the sale, delivery, or transfer is made, where a dealer is the seller, transferor, or otherwise responsible for delivery of the firearm, the dealer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12077, together with the original certification. On the day the sale, delivery, or transfer is made, where the transfer is conducted pursuant to Section 12084, the law enforcement agency shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and

the firearm as is indicated in Section 12084, together with the original certification. The reports which peace officers shall complete shall be provided to them by the department. No report need be submitted to the Department of Justice where a peace officer receiving the firearm received it from his or her employer in accordance with the applicable rules, regulations, or procedures of the employer.

(2) The preceding provisions of this article, except subdivision (e) of Section 12076, do not apply to deliveries, transfers, or sales of firearms made to peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 made pursuant to Section 10334 of the Public Contract Code. On the day the sale, delivery, or transfer is made, and a dealer is not the person responsible for the delivery of the firearm or the transfer or sale is not conducted through a law enforcement agency pursuant to Section 12084, the peace officer receiving the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the seller or transferor, the buyer or transferee, and the firearm as is indicated in Section 12077. On the day the sale, delivery, or transfer is made, where a dealer is responsible for delivery of the firearm, the dealer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12077. On the day the sale, delivery, or transfer is made where the transfer is conducted pursuant to Section 12084, the law enforcement agency shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12084. The reports which peace officers shall complete shall be the same as those set forth in paragraph (1) of this subdivision and shall be provided to them by the department.

(3) Subdivision (d) of Section 12072 does not apply to sales, deliveries, or transfers of firearms to authorized representatives of cities, cities and counties, counties, or state or federal governments for those governmental agencies where the entity is acquiring the weapon as part of an authorized, voluntary program where the entity is buying or receiving weapons from private individuals. Any weapons acquired pursuant to this subdivision shall be disposed of pursuant to the applicable provisions of Section 12028 or 12032.

(b) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(c) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family.

(2) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family and both of the following conditions are met:

(A) The person to whom the firearm is transferred shall, within 30 days of taking possession of the firearm, forward by prepaid mail or deliver in person to the Department of Justice, a report that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question. The report forms that individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(B) Prior to taking possession of the firearm, the person taking title to the firearm shall obtain a basic firearm safety certificate.

(3) As used in this subdivision, immediate family member means any one of the following relationships:

(A) Parent and child.

(B) Grandparent and grandchild.

(d) Subdivision (d) of Section 12072 shall not apply to the infrequent loan of firearms between persons who are personally known to each other for any lawful purpose, if the loan does not exceed 30 days in duration.

(e) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery of a firearm to a gunsmith for service or repair.

(f) Subdivision (d) of Section 12072 shall not apply to the sale, delivery, or transfer of firearms by persons who reside in this state to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(g) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent sale or transfer of a firearm, other than a pistol, revolver, or other firearm capable of being concealed upon the person, at auctions or similar events conducted by nonprofit mutual or public benefit corporations organized pursuant to the Corporations Code.

As used in this paragraph, the term "infrequent" shall not be construed to prohibit different local chapters of the same nonprofit corporation from conducting auctions or similar events, provided the individual local chapter conducts the auctions or similar events infrequently. It is the intent of the Legislature that different local chapters, representing different localities, be entitled to invoke the exemption created by this paragraph, notwithstanding the frequency with which other chapters of the same nonprofit corporation may conduct auctions of similar events.

(2) Subdivision (d) of Section 12072 shall not apply to the transfer of a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, if the firearm is donated for an auction or similar event described in paragraph (1) and the firearm is delivered to the nonprofit corporation immediately preceding, or contemporaneous with, the auction or similar event.

(3) The waiting period described in Sections 12071 and 12072 shall not apply to a dealer who delivers a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, at an auction or similar event described in paragraph (1), as authorized by subparagraph (C) of paragraph (1) of subdivision (b) of Section 12071. Within 48 hours of the sale, delivery, or transfer, the dealer shall forward by prepaid mail to the Department of Justice a report of the same as is indicated in paragraph (3) of subdivision (a) of Section 12077.

(h) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm for the purposes of shooting at targets if the loan occurs on the premises of a target facility which holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(i) (1) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of firearms by operation of law if all the following conditions are met:

(A) The person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms.

(B) If the firearms are pistols, revolvers, or other firearms capable of being concealed upon the person, and the person is not a levying officer as defined in Section 481.140, 511.060, or 680.210 of the Code of Civil Procedure, the person shall, within 30 days of taking possession, forward by prepaid mail or deliver in person to the Department of Justice, a report of the same and the type of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports which individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(C) In the case of a transmutation of property between spouses made in accordance with Section 850 of the Family Code consisting of a pistol, revolver, or other firearm capable of being concealed upon the person, taking place on or after April 1, 1994, a basic firearm safety certificate shall be required prior to taking possession of the firearm.

(2) Subdivision (d) of Section 12072 shall not apply to a person who takes possession of a firearm by operation of law in a representative capacity who transfers ownership of the firearm to

himself or herself in his or her individual capacity. In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, on and after April 1, 1994, that individual shall have a basic firearm safety certificate in order for the exemption set forth in this paragraph to apply.

(j) Subdivision (d) of Section 12072 shall not apply to deliveries, transfers, or returns of firearms made pursuant to Section 12028, 12028.5, or 12030.

(k) Section 12071 and subdivision (c) of Section 12072 shall not apply to:

(1) The delivery, sale, or transfer of unloaded firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person by a dealer to another dealer upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(2) The delivery, sale, or transfer of unloaded firearms by dealers to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(3) The delivery, sale, or transfer of unloaded firearms to a wholesaler if the firearms are being returned to the wholesaler and are intended as merchandise in the wholesaler's business.

(4) The delivery, sale, or transfer of unloaded firearms by one dealer to another dealer if the firearms are intended as merchandise in the receiving dealer's business upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(5) The delivery, sale, or transfer of an unloaded firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer to himself or herself.

(6) The loan of an unloaded firearm by a dealer who also operates a target facility that holds a business or regulatory license on the premises of the building designated in the license or whose building designated in the license is on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, to a person at that target facility or that club or organization, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(*l*) A person who is exempt from subdivision (d) of Section 12072 or is otherwise not required by law to report his or her acquisition, ownership, or disposal of a pistol, revolver, or other firearm capable of being concealed upon the person or who moves out of this state with his or her pistol, revolver, or other firearm capable of being concealed upon the person may submit a report of the same to the Department of Justice in a format prescribed by the department.

(m) Subdivision (d) of Section 12072 shall not apply to the delivery, sale, or transfer of unloaded firearms to a wholesaler as merchandise in the wholesaler's business by manufacturers or importers licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code

and the regulations issued pursuant thereto, or by another wholesaler, if the delivery, sale, or transfer is made in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(n) (1) The waiting period described in Section 12071 or 12072 shall not apply to the delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer in either of the following situations:

(A) The dealer is delivering the firearm to another dealer and it is not intended as merchandise in the receiving dealer's business.

(B) The dealer is delivering the firearm to himself or herself and it is not intended as merchandise in his or her business.

(2) In order for this subdivision to apply, both of the following shall occur:

(A) If the dealer is receiving the firearm from another dealer, the dealer receiving the firearm shall present proof to the dealer delivering the firearm that he or she is licensed pursuant to Section 12071.

(B) Whether the dealer is delivering, selling, or transferring the firearm to himself or herself or to another dealer, on the date that the delivery, sale, or transfer is made, the dealer delivering the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the purchaser or transferee as is indicated in paragraph (2) of subdivision (a) of Section 12077.

(o) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery, sale, or transfer of firearms regulated pursuant to Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275), if the delivery, sale, or transfer is conducted in accordance with the applicable provisions of Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275).

(p) (1) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor, with the express permission of the parent or legal guardian of the minor, if the loan does not exceed 30 days in duration and is for a lawful purpose.

(2) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by a person who is not the parent or legal guardian of the minor if all of the following circumstances exist:

(A) The minor has the written consent of his or her parent or legal guardian that is presented at the time of, or prior to the time of, the loan, or is accompanied by his or her parent or legal guardian at the time the loan is made.

(B) The minor is being loaned the firearm for the purpose of engaging in a lawful, recreational sport, including, but not limited to,

competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(C) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(D) The duration of the loan does not, in any event, exceed 10 days.

(3) Paragraph (3) of subdivision (a) and of subdivision (d) Section 12072 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian if both of the following circumstances exist:

(A) The minor is being loaned the firearm for the purposes of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(B) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment, or theatrical event, the nature of which involves the use of a firearm.

(4) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian.

(5) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her grandparent who is not the legal guardian of the minor if the transfer is done with the express permission of the parent or legal guardian of the minor.

(q) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a licensed hunter for use by that licensed hunter for a period of time not to exceed the duration of the hunting season for which that firearm is to be used.

(r) The waiting period described in Section 12071, 12072, or 12084 shall not apply to the delivery, sale, or transfer of a firearm to the holder of a special weapons permit issued by the Department of Justice issued pursuant to Section 12095, 12230, 12250, 12305. On the date that the delivery, sale, or transfer is made, the dealer delivering

the firearm or the law enforcement agency processing the transaction pursuant to Section 12084, shall forward by prepaid mail to the Department of Justice a report of the information concerning the purchaser or transferee as described in subdivision (a) of Section 12077 or Section 12084.

(s) Subdivision (d) of Section 12072 shall not apply to the loan of an unloaded firearm or the loan of a firearm loaded with blank cartridges for use solely as a prop for a motion picture, television, or video production or entertainment or theatrical event.

(t) As used in this section:

(1) "Infrequent" has the same meaning as in paragraph (1) of subdivision (c) of Section 12070.

(2) "A person taking title or possession of firearms by operation of law" includes, but is not limited to, any of the following instances wherein an individual receives title to, or possession of, firearms:

(A) The executor or administrator of an estate if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property consisting of firearms pursuant to Section 850 of the Family Code.

(H) Firearms passing to a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code.

SEC. 10. Section 12084 of the Penal Code is amended to read:

12084. (a) As used in this section, the following definitions shall control:

(1) "Agency" means a sheriff's department in a county of less than 200,000 persons, according to the most recent federal decennial census that elects to process purchases, sales, loans, or transfers of firearms.

(2) "Seller" means the seller or transferor of a firearm or the person loaning the firearm.

(3) "Purchaser" means the purchaser or transferee of a firearm or the person being loaned a firearm.

(4) "Purchase" means the purchase, loan, sale, or transfer of a firearm.

(5) "Department" means the Department of Justice.

(6) "LEFT" means the Law Enforcement Firearms Transfer Form consisting of the transfer form utilized to purchase a firearm

in accordance with this section.

(b) As an alternative to completing the sale, transfer, or loan of a firearm through a licensed dealer pursuant to Section 12082 in order to comply with the provisions of subdivision (d) of Section 12072, the parties to the purchase of a firearm may complete the transaction through an agency in accordance with this section in order to comply with the provisions of subdivision (d) of Section 12072.

(c) (1) LEFTs shall be prepared by the State Printer and shall be furnished to agencies on application at a cost to be determined by the Department of General Services for each 100 leaves in quintuplicate, one original and four duplicates for the making of carbon copies. The original and duplicate copies shall differ in color, and shall be in the form provided by this section. The State Printer, upon issuing the LEFT, shall forward to the department the name and address of the agency together with the series and sheet numbers on the LEFT. The LEFT shall not be transferable.

(2) The department shall prescribe the form of the LEFT. It shall be in the same exact format set forth in Sections 12077 and 12082, with the same distinct formats for firearms that are pistols, revolvers, and other firearms capable of being concealed upon the person and for firearms that are not pistols, revolvers, and other firearms capable of being concealed upon the person, except that instead of the listing of information concerning a dealer, the LEFT shall contain the name, telephone number, and address of the law enforcement agency.

(3) The original of each LEFT shall be retained in consecutive order. Each book of 50 originals shall become the permanent record of transactions that shall be retained not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, department employee designated by the Attorney General, or agents of the federal Bureau of Alcohol, Tobacco and Firearms upon the presentation of proper identification.

(4) Ink shall be used to complete each LEFT. The agency shall ensure that all information is provided legibly. The purchaser and seller shall be informed that incomplete or illegible information delays purchases.

(5) Each original LEFT shall contain instructions regarding the procedure for completion of the form and the routing of the form. The agency shall comply with these instructions which shall include the information set forth in this subdivision.

(6) One firearm transaction shall be reported on each LEFT. For purposes of this paragraph, a "transaction" means a single sale, loan, or transfer of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person between the same two persons.

(d) The following procedures shall be followed in processing the purchase:

(1) Without waiting for the conclusion of any waiting period to

elapse, the seller shall immediately deliver the firearm to the agency solely to complete the LEFT. Upon completion of the LEFT, the firearm shall be immediately returned by the agency to the seller without waiting for the waiting period to elapse.

(2) The purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the agency. The agency shall require the purchaser to complete the original and one copy of the LEFT. An employee of the agency shall then affix his or her signature as a witness to the signature and identification of the purchaser.

(3) Two copies of the LEFT shall, on that date of purchase, be placed in the mail, postage prepaid to the department at Sacramento. The third copy shall be provided to the purchaser and the fourth copy to the seller.

(4) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) If the department determines that the copies of the LEFT submitted to it pursuant to paragraph (3) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the firearm to be purchased, or if any fee required pursuant to paragraph (6) is not submitted by the agency in conjunction with submission of the copies of the LEFT, or if the department determines that the person is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the agency of that fact. Upon notification by the department, the purchaser shall submit any fee required pursuant to paragraph (6), as appropriate, and if notification by the department is received by the agency at any time prior to delivery of the firearm, the delivery of the firearm shall be withheld until the conclusion of the waiting period described in paragraph (7).

(6) The department and the agency may both charge a fee not to exceed the actual cost of processing the purchaser sufficient to reimburse both of the following:

(A) The agency for processing the transfer.

(B) The department for providing the information. The department shall charge the same fee as it would charge a dealer pursuant to Section 12082.

(7) The firearm shall not be delivered to the purchaser as follows:

(A) Prior to January 1, 1996, within 15 days of application for the purchase or, after notice by the department pursuant to paragraph (5), within 15 days of the submission to the department of any fees required pursuant to this subdivision, or within 15 days of a corrected LEFT, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other

firearm capable of being concealed upon the person, or after notice by the department pursuant to paragraph (5), within 15 days of the submission to the department of any fees required pursuant to this subdivision, or within 15 days of the submission to the department of corrected copies of the LEFT, whichever is later. On or after January 1, 1996, within 10 days of the application for purchase of a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, or after notice by the department pursuant to paragraph (5), or within 10 days of submission to the department of any fees required pursuant to this subdivision, or within 10 days of the submission to the department of corrected copies of the LEFT, whichever is later.

(B) Unless unloaded.

(C) In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, unless securely wrapped or in a locked container.

(D) Unless the purchaser presents clear evidence of his or her identity and age to the agency.

(E) Whenever the agency is notified by the department that the person is in a prohibited class described in Section 12021 or 12021.1 or Section 8100 or 8103 of the Welfare and Institutions Code.

(F) Unless done at the agency's premises.

(G) In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, commencing April 1, 1994, unless the purchaser presents to the seller a basic firearm safety certificate.

(H) Unless the purchaser is at least 18 years of age.

(e) The action of a law enforcement agency acting pursuant to Section 12084 shall be deemed to be a discretionary act within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(f) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, its acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(g) Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the LEFT is guilty of a misdemeanor.

(h) All sums received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund.

SEC. 11. Section 12101 of the Penal Code is amended to read:

12101. (a) (1) A minor shall not possess a pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Paragraph (1) shall not apply if one of the following circumstances exists:

(A) The minor is accompanied by his or her parent or legal

guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves this use of a firearm.

(B) The minor is accompanied by a responsible adult, the minor has the prior written consent of his or her parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(C) The minor is at least 16 years of age, the minor has the prior written consent of his or her parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(D) The minor has the prior written consent of his or her parent or legal guardian, the minor is on lands owned or lawfully possessed by his or her parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(b) (1) A minor shall not possess live ammunition.

(2) Paragraph (1) shall not apply if one of the following circumstances exists:

(A) The minor has the written consent of his or her parent or legal guardian to possess live ammunition.

(B) The minor is accompanied by his or her parent or legal guardian.

(C) The minor is actively engaged in, or is going to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, the nature of which involves the use of a firearm.

(c) Every minor who violates this section shall be punished as follows:

(1) By imprisonment in the state prison or in a county jail if one of the following applies:

(A) The minor has been found guilty previously of violating this section.

(B) The minor has been found guilty previously of an offense specified in subdivision (b) of Section 12021.1 or in Section 12020, 12220, 12520, or 12560.

(C) The minor has been found guilty of a violation of paragraph

(1) of subdivision (a).

(2) Violations of this section other than those violations specified in paragraph (1) shall be punishable as a misdemeanor.

(d) In addition to any other penalty provided by law, a minor who violates this section shall suffer revocation or withholding of issuance of his or her driver's license by the Department of Motor Vehicles, until he or she attains the age of 18 years, pursuant to direction from the court. If the driver's license or driving privilege is under suspension or revocation until the age of 18 years at the time that a violation of this section is found, the court shall direct the department to extend the period of suspension or revocation for an additional period of up to one year. If, in the judgment of the court, a personal or family hardship exists that requires the minor to have a driver's license for his or her own, or a member of his or her own family's, employment or for medically related purposes, the revocation may be waived and the court may restrict the minor's driving privilege to only those employment or medical purposes.

(e) As used in this section, "responsible adult" means a person at least 21 years of age who is not within a class of persons prohibited from owning or possessing firearms by virtue of Section 12021 or 12021.1 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code.

(f) It is not the intent of the Legislature in enacting the amendments to this section or to Section 12078 to expand or narrow the application of current statutory or judicial authority to limit the rights of minors to be loaned or to possess live ammunition or a firearm for the purpose of self-defense or the defense of others.

SEC. 12. Section 8101 of the Welfare and Institutions Code is amended to read:

8101. (a) Any person who shall knowingly supply, sell, give, or allow possession or control of a deadly weapon to any person described in Section 8100 or 8103 shall be punishable by imprisonment in the state prison, or in a county jail for a period of not exceeding one year, by a fine of not exceeding one thousand dollars ($1,000), or by both the fine and imprisonment.

(b) Any person who shall knowingly supply, sell, give, or allow possession or control of a firearm to any person described in Section 8100 or 8103 shall be punished by imprisonment in the state prison for two, three, or four years.

(c) "Deadly weapon," as used in this section, has the meaning prescribed by Section 8100.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become

operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 14. Section 7.5 of this bill incorporates amendments to Section 12072 of the Penal Code proposed by both this bill and only in part by SB 1308. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 12072 of the Penal Code, and (3) this bill is enacted after SB 1308, in which case Section 7 of this bill shall not become operative.

SEC. 15. Section 8.5 of this bill incorporates amendments to Section 12076 of the Penal Code proposed by both this bill and SB 1308. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 12076 of the Penal Code, and (3) this bill is enacted after SB 1308, in which case Section 8 of this bill shall not become operative.

SEC. 16. Section 9.5 of this bill incorporates amendments to Section 12078 of the Penal Code proposed by both this bill and SB 1308. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 12078 of the Penal Code, and (3) this bill is enacted after SB 1308, in which case Section 9 of this bill shall not become operative.

SEC. 17. This bill shall become operative only if Assembly Bill 2428 of the 1993–94 Regular Session of the Legislature is chaptered and becomes effective on or before January 1, 1995.

CHAPTER 452

An act to amend Sections 1731, 1767.1, and 1769 of, to add Section 1000.1 to, and to add Article 11 (commencing with Section 1910) to Chapter 1 of Division 2.5 of, the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 9, 1994. Filed with Secretary of State September 9, 1994.]

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

SECTION 1. Section 1000.1 is added to the Welfare and Institutions Code, to read:

1000.1. In order to provide counties with alternative placement options, the Department of the Youth Authority is authorized to establish, maintain, or facilitate the development of regional centers, which may be available on a contract basis to counties for the placement of wards. The regional centers, depending on the services needed, may provide, but are not limited to, the following: mental health programs, short-term incarceration and treatment services, and boot camp programs. This section shall not be interpreted to prohibit counties from jointly developing regional centers.

SEC. 2. Section 1731 of the Welfare and Institutions Code is amended to read:

1731. (a) When in any criminal proceeding in a court of this State a person has been convicted of a public offense and the person was a minor when he or she committed the offense, the court shall determine whether the person was less than 21 years of age at the time of the apprehension from which the criminal proceeding resulted. Proceedings in a juvenile court in respect to a juvenile are not criminal proceedings as that phrase is used in this chapter.

(b) Notwithstanding any other provision of law, no court shall have the power to order an adult convicted of a public offense in a court of criminal jurisdiction to be committed to the Youth Authority. This subdivision shall not apply to a transfer pursuant to Section 1731.5.

SEC. 3. Section 1767.1 of the Welfare and Institutions Code is amended to read:

1767.1. At least 30 days before the Youthful Offender Parole Board meets to review or consider the parole of any person who has been committed to the control of the Department of the Youth Authority for the commission of any offense described in subdivision (b) of Section 707, or for the commission of an offense in violation of paragraph (3) of subdivision (a) of Section 261 of the Penal Code, the board shall send written notice of the hearing to each of the following persons: the judge of the court which committed the person to the Youth Authority, the attorney for the person, the district attorney of the county from which the person was committed, and the law enforcement agency that investigated the case.

Each of the persons so notified shall have the right to submit a written statement to the board at least 10 days prior to the scheduled hearing for the board's consideration at the hearing. Nothing in this section shall be construed to permit any person so notified to attend the hearing. With respect to the parole of any person over the age of 18 years, the presiding officer shall state findings and supporting reasons for the decision of the board at the hearing. The findings and reasons shall be reduced to writing, and shall be made available for inspection by members of the public no later than 30 days from the date of the hearing.

The Youthful Offender Parole Board, when it sends the required written notice to the judge of the court which committed the person to the Department of the Youth Authority, shall send the progress report prepared by the Department of the Youth Authority regarding the ward.

SEC. 4. Section 1769 of the Welfare and Institutions Code is amended to read:

1769. (a) Every person committed to the Department of the Youth Authority by a juvenile court shall, except as provided in subdivision (b), be discharged upon the expiration of a two-year period of control or when the person reaches his or her 21st birthday,

whichever occurs later, unless an order for further detention has been made by the committing court pursuant to Article 6 (commencing with Section 1800).

(b) Every person committed to the Department of the Youth Authority by a juvenile court who has been found to be a person described in Section 602 by reason of the violation of any of the offenses listed in subdivision (b) of Section 707, shall be discharged upon the expiration of a two-year period of control or when the person reaches his or her 25th birthday, whichever occurs later, unless an order for further detention has been made by the committing court pursuant to Article 6 (commencing with Section 1800).

SEC. 5. Article 11 (commencing with Section 1910) is added to Chapter 1 of Division 2.5 of the Welfare and Institutions Code, to read:

Article 11. Classification and Information System

1910. The Legislature hereby finds that wards are committed to the Department of the Youth Authority at rates and for seriousness of risks and needs which vary considerably from county to county. Current law requires the Department of the Youth Authority to accept a person committed to it if it believes that the person can be materially benefited by its reformatory and educational discipline, and if it has adequate facilities to provide that care. The Legislature also finds that, with an increasing youth population in California, some persons committed to the department may not be accepted because of insufficient facilities. Further, objective systems for classifying the risks posed by a minor and the needs of the minor for training and treatment can increase the equity in acceptance decisions and allocate custody and services to the minors throughout the state who can most materially benefit from a Youth Authority commitment.

1911. The Department of the Youth Authority shall, as resources are available, develop and implement a system to classify persons committed to the department. In developing this classification system, the Department of the Youth Authority shall consult with the Association of Chief Probation Officers of California and the Juvenile Court Judges section of the California Judges Association. This classification system shall include objective categories to assess the risks and needs of each person committed to the Department of the Youth Authority. The aggregate information from the classification system shall become the basis for the development of standardized criteria to determine suitability for commitment to the Department of the Youth Authority.

1912. The Department of the Youth Authority shall, as resources are available, conduct an assessment of the feasibility and costs of developing and implementing a statewide juvenile information system, to include information on the offenses, characteristics, and

dispositions of individual youths from referral to probation through discharge from the Department of the Youth Authority and for a period of time after discharge. This system shall be designed to ensure that the Department of the Youth Authority receives the information needed for each person committed to it, in order to plan properly for his or her program of training and treatment. This system shall also be designed to permit the Department of the Youth Authority to obtain information on subsequent offenses and other characteristics after release from Youth Authority institutions and after discharge from parole, for use in evaluating the department's programs.

1913. The Department of the Youth Authority shall seek federal funds and funds from other sources to develop the classification system and to assess the feasibility of a statewide juvenile information system.

1914. The Department of the Youth Authority shall submit a report to the Legislature on or before January 1, 1996, on the status of the development of the classification system and on the feasibility and costs of a statewide juvenile information system.

SEC. 6. This act shall become operative only if Senate Concurrent Resolution 38 of the 1993–94 Regular Session of the Legislature is adopted by the Legislature and Assembly Bill 2428 of the 1993–94 Regular Session of the Legislature is enacted.

CHAPTER 453

An act to amend Sections 207.1, 211, 607, 653.1, 653.5, 654.3, 676, 707, 707.1, 727, 781, 827, 828.1, 1731.5, 1753.3, 1767.1, 1769, and 1772 of, and to add Section 707.01 to, the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 9, 1994. Filed with Secretary of State September 9, 1994.]

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

SECTION 1. Section 207.1 of the Welfare and Institutions Code, as amended by Section 24 of Chapter 695 of the Statutes of 1992, is amended to read:

207.1. (a) No court, judge, referee, peace officer, or employee of a detention facility shall knowingly detain any minor in a jail or lockup, except as provided in subdivision (b) or (d).

(b) Any minor who is alleged to have committed an offense described in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707, whose case is transferred to a court of criminal jurisdiction pursuant to Section 707.1 after a finding is made that he or she is not a fit and proper subject to be dealt with under the juvenile court law, may be detained in a jail or other secure

facility for the confinement of adults, if all of the following conditions are met:

(1) The juvenile court judge makes a finding at the conclusion of the fitness hearing that the minor's further detention in the juvenile hall would endanger the safety of the public or would be detrimental to the other minors in the juvenile hall.

(2) Contact between the minor and adults in the facility is restricted in accordance with Section 208.

(3) The minor is adequately supervised.

(c) A minor who is found not to be a fit and proper subject to be dealt with under the juvenile court law, upon the conclusion of the fitness hearing, shall be entitled to be released on bail or on his or her own recognizance upon the same circumstances, terms, and conditions as an adult who is alleged to have committed the same offense.

(d) A minor 14 years of age or older who is taken into temporary custody by a peace officer on the basis of being a person described by Section 602, and who, in the reasonable belief of the peace officer, presents a serious security risk of harm to self or others, may be securely detained in a law enforcement facility that contains a lockup for adults, if all of the following conditions are met:

(1) The minor is held in temporary custody for the purpose of investigating the case, facilitating release of the minor to a parent or guardian, or arranging transfer of the minor to an appropriate juvenile facility.

(2) The minor is detained in the law enforcement facility for a period that does not exceed six hours except as provided in subdivision (g).

(3) The minor is informed at the time he or she is securely detained of the purpose of the secure detention, of the length of time the secure detention is expected to last, and of the maximum six-hour period the secure detention is authorized to last. In the event an extension is granted pursuant to subdivision (g), the minor shall be informed of the length of time the extension is expected to last.

(4) Contact between the minor and adults confined in the facility is restricted in accordance with Section 208.

(5) The minor is adequately supervised.

(6) A log or other written record is maintained by the law enforcement agency showing the offense which is the basis for the secure detention of the minor in the facility, the reasons and circumstances forming the basis for the decision to place the minor in secure detention, and the length of time the minor was securely detained.

Any other minor who is taken into temporary custody by a peace officer on the basis that the minor is a person described by Section 602, may be taken to a law enforcement facility that contains a lockup for adults and may be held in temporary custody in the facility for the purposes of investigating the case, facilitating the release of the minor to a parent or guardian, or arranging for the transfer of the

minor to an appropriate juvenile facility. However, while in the law enforcement facility, the minor may not be securely detained and shall be supervised in a manner so as to ensure that there will be no contact with adults in custody in the facility. If the minor is held in temporary, nonsecure custody within the facility, the peace officer shall exercise one of the dispositional options authorized by Sections 626 and 626.5 without unnecessary delay and, in every case, within six hours.

"Law enforcement facility," as used in this subdivision, includes a police station or a sheriff's station, but does not include a jail, as defined in subdivision (i).

(e) The Department of the Youth Authority shall assist law enforcement agencies, probation departments, and courts with the implementation of this section by doing all of the following:

(1) The Department of the Youth Authority shall advise each law enforcement agency, probation department, and court affected by this section as to its existence and effect.

(2) The Department of the Youth Authority shall make available and, upon request, shall provide technical assistance to each governmental agency that reported the confinement of a minor in a jail or lockup in calendar year 1984 or 1985. The purpose of this technical assistance is to develop alternatives to the use of jails or lockups for the confinement of minors. These alternatives may include secure or nonsecure facilities located apart from an existing jail or lockup; improved transportation or access to juvenile halls or other juvenile facilities; and other programmatic alternatives recommended by the Department of the Youth Authority. The technical assistance shall take any form the Department of the Youth Authority deems appropriate for effective compliance with this section.

(f) The Department of the Youth Authority may exempt a county that does not have a juvenile hall, or may exempt an offshore law enforcement facility, from compliance with this section for a reasonable period of time, until December 1, 1992, for the purpose of allowing the county or the facility to develop alternatives to the use of jails and lockups for the confinement of minors, if all of the following conditions are met:

(1) The county or the facility submits a written request to the Department of the Youth Authority for an extension of time to comply with this section.

(2) The Department of the Youth Authority agrees to make available, and the county or the facility agrees to accept, technical assistance to develop alternatives to the use of jails and lockups for the confinement of minors during the period of the extension.

(3) The county or the facility requesting the extension submits to the Department of the Youth Authority a written plan for full compliance with this section by September 1, 1987.

(g) (1) Under the limited conditions of inclement weather, acts of God, or natural disasters that result in the temporary unavailability

of transportation, an extension of the six-hour maximum period of detention set forth in paragraph (2) of subdivision (d) may be granted to a county by the Department of the Youth Authority. The extensions may only be granted by the Department of the Youth Authority on an individual, case-by-case basis. If the extension is granted, the detention of minors under those conditions shall not exceed the duration of the special conditions, plus a period reasonably necessary to accomplish transportation of the minor to a suitable juvenile facility, not to exceed six hours after the restoration of available transportation.

A county that receives an extension under this paragraph shall comply with the requirements set forth in subdivision (d). The county also shall provide a written report to the Department of the Youth Authority that specifies when the inclement weather, act of God, or natural disaster ceased to exist, when transportation availability was restored, and when the minor was delivered to a suitable juvenile facility. In the event that the minor was detained in excess of 24 hours, the Department of the Youth Authority shall verify the information contained in the report.

(2) Under the limited condition of temporary unavailability of transportation, an extension of the six-hour maximum period of detention set forth in paragraph (2) of subdivision (d) may be granted by the Department of the Youth Authority to an offshore law enforcement facility. The extension may be granted only by the Department of the Youth Authority on an individual, case-by-case basis. If the extension is granted, the detention of minors under those conditions shall extend only until the next available mode of transportation can be arranged.

An offshore law enforcement facility that receives an extension under this paragraph shall comply with the requirements set forth in subdivision (d). The facility also shall provide a written report to the Department of the Youth Authority that specifies when the next mode of transportation became available, and when the minor was delivered to a suitable juvenile facility. In the event that the minor was detained in excess of 24 hours, the Department of the Youth Authority shall verify the information contained in the report.

(3) At least annually, the Department of the Youth Authority shall review and report on extensions sought and granted under this subdivision. If, upon that review, the Department of the Youth Authority determines that a county has sought one or more extensions resulting in the excessive confinement of minors in adult facilities, or that a county is engaged in a pattern and practice of seeking extensions, it shall require the county to submit a detailed explanation of the reasons for the extensions sought and an assessment of the need for a conveniently located and suitable juvenile facility. Upon receiving this information, the Department of the Youth Authority shall make available, and the county shall accept, technical assistance for the purpose of developing suitable alternatives to the confinement of minors in adult lockups. Based

upon the information provided by the county, the Department of the Youth Authority also may place limits on, or refuse to grant, future extensions requested by the county under this subdivision.

(h) Any county that did not have a juvenile hall on January 1, 1987, may establish a special purpose juvenile hall, as defined by the Department of the Youth Authority, for the detention of minors for a period not to exceed 96 hours. Any county that had a juvenile hall on January 1, 1987, also may establish, in addition to the juvenile hall, a special purpose juvenile hall. The Department of the Youth Authority shall prescribe minimum standards for any such facility.

(i) (1) "Jail," as used in this chapter, means any building that contains a locked facility administered by a law enforcement or governmental agency, the purpose of which is to detain adults who have been charged with violations of criminal law and are pending trial, or to hold convicted adult criminal offenders sentenced for less than one year.

(2) "Lockup," as used in this chapter, means any locked room or secure enclosure under the control of a sheriff or other peace officer which is primarily for the temporary confinement of adults upon arrest.

(3) "Offshore law enforcement facility," as used in this section, means a sheriff's station containing a lockup for adults that is located on an island located at least 22 miles from the California coastline.

(j) Nothing in this section shall be deemed to prevent a peace officer or employee of an adult detention facility or jail from escorting a minor into the detention facility or jail for the purpose of administering an evaluation, test, or chemical test pursuant to Section 23157 of the Vehicle Code, if all of the following conditions are met:

(1) The minor is taken into custody by a peace officer on the basis of being a person described by Section 602 and there is no equipment for the administration of the evaluation, test, or chemical test located at a juvenile facility within a reasonable distance of the point where the minor was taken into custody.

(2) The minor is not locked in a cell or room within the adult detention facility or jail, is under the continuous, personal supervision of a peace officer or employee of the detention facility or jail, and is not permitted to come in contact or remain in contact with in-custody adults.

(3) The evaluation, test, or chemical test administered pursuant to Section 23157 of the Vehicle Code is performed as expeditiously as possible, so that the minor is not delayed unnecessarily within the adult detention facility or jail. Upon completion of the evaluation, test, or chemical test, the minor shall be removed from the detention facility or jail as soon as reasonably possible. No minor shall be held in custody in an adult detention facility or jail under the authority of this paragraph in excess of two hours.

(k) This section shall remain operative until July 1, 1995, on which date it shall be repealed.

SEC. 1.5. Section 207.1 of the Welfare and Institutions Code, as amended by Section 24 of Chapter 695 of the Statutes of 1992, is amended to read:

207.1. (a) No court, judge, referee, peace officer, or employee of a detention facility shall knowingly detain any minor in a jail or lockup, except as provided in subdivision (b) or (d).

(b) Any minor who is alleged to have committed an offense described in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 whose case is transferred to a court of criminal jurisdiction pursuant to Section 707.1 after a finding is made that he or she is not a fit and proper subject to be dealt with under the juvenile court law, or any minor who has been charged directly in or transferred to a court of criminal jurisdiction pursuant to Section 707.01, may be detained in a jail or other secure facility for the confinement of adults, if all of the following conditions are met:

(1) The juvenile court or the court of criminal jurisdiction makes a finding that the minor's further detention in the juvenile hall would endanger the safety of the public or would be detrimental to the other minors in the juvenile hall.

(2) Contact between the minor and adults in the facility is restricted in accordance with Section 208.

(3) The minor is adequately supervised.

(c) A minor who is either found not to be a fit and proper subject to be dealt with under the juvenile court law or who will be transferred to a court of criminal jurisdiction pursuant to Section 707.01, at the time of transfer to a court of criminal jurisdiction or at the conclusion of the fitness hearing, as the case may be, shall be entitled to be released on bail or on his or her own recognizance upon the same circumstances, terms, and conditions as an adult who is alleged to have committed the same offense.

(d) A minor 14 years of age or older who is taken into temporary custody by a peace officer on the basis of being a person described by Section 602, and who, in the reasonable belief of the peace officer, presents a serious security risk of harm to self or others, may be securely detained in a law enforcement facility that contains a lockup for adults, if all of the following conditions are met:

(1) The minor is held in temporary custody for the purpose of investigating the case, facilitating release of the minor to a parent or guardian, or arranging transfer of the minor to an appropriate juvenile facility.

(2) The minor is detained in the law enforcement facility for a period that does not exceed six hours except as provided in subdivision (g).

(3) The minor is informed at the time he or she is securely detained of the purpose of the secure detention, of the length of time the secure detention is expected to last, and of the maximum six-hour period the secure detention is authorized to last. In the event an extension is granted pursuant to subdivision (g), the minor shall be informed of the length of time the extension is expected to last.

(4) Contact between the minor and adults confined in the facility is restricted in accordance with Section 208.

(5) The minor is adequately supervised.

(6) A log or other written record is maintained by the law enforcement agency showing the offense which is the basis for the secure detention of the minor in the facility, the reasons and circumstances forming the basis for the decision to place the minor in secure detention, and the length of time the minor was securely detained.

Any other minor who is taken into temporary custody by a peace officer on the basis that the minor is a person described by Section 602, may be taken to a law enforcement facility that contains a lockup for adults and may be held in temporary custody in the facility for the purposes of investigating the case, facilitating the release of the minor to a parent or guardian, or arranging for the transfer of the minor to an appropriate juvenile facility. However, while in the law enforcement facility, the minor may not be securely detained and shall be supervised in a manner so as to ensure that there will be no contact with adults in custody in the facility. If the minor is held in temporary, nonsecure custody within the facility, the peace officer shall exercise one of the dispositional options authorized by Sections 626 and 626.5 without unnecessary delay and, in every case, within six hours.

"Law enforcement facility," as used in this subdivision, includes a police station or a sheriff's station, but does not include a jail, as defined in subdivision (i).

(e) The Department of the Youth Authority shall assist law enforcement agencies, probation departments, and courts with the implementation of this section by doing all of the following:

(1) The Department of the Youth Authority shall advise each law enforcement agency, probation department, and court affected by this section as to its existence and effect.

(2) The Department of the Youth Authority shall make available and, upon request, shall provide technical assistance to each governmental agency that reported the confinement of a minor in a jail or lockup in calendar year 1984 or 1985. The purpose of this technical assistance is to develop alternatives to the use of jails or lockups for the confinement of minors. These alternatives may include secure or nonsecure facilities located apart from an existing jail or lockup; improved transportation or access to juvenile halls or other juvenile facilities; and other programmatic alternatives recommended by the Department of the Youth Authority. The technical assistance shall take any form the Department of the Youth Authority deems appropriate for effective compliance with this section.

(f) The Department of the Youth Authority may exempt a county that does not have a juvenile hall, or may exempt an offshore law enforcement facility, from compliance with this section for a reasonable period of time, until December 1, 1992, for the purpose

of allowing the county or the facility to develop alternatives to the use of jails and lockups for the confinement of minors, if all of the following conditions are met:

(1) The county or the facility submits a written request to the Department of the Youth Authority for an extension of time to comply with this section.

(2) The Department of the Youth Authority agrees to make available, and the county or the facility agrees to accept, technical assistance to develop alternatives to the use of jails and lockups for the confinement of minors during the period of the extension.

(3) The county or the facility requesting the extension submits to the Department of the Youth Authority a written plan for full compliance with this section by September 1, 1987.

(g) (1) Under the limited conditions of inclement weather, acts of God, or natural disasters that result in the temporary unavailability of transportation, an extension of the six-hour maximum period of detention set forth in paragraph (2) of subdivision (d) may be granted to a county by the Department of the Youth Authority. The extensions may only be granted by the Department of the Youth Authority on an individual, case-by-case basis. If the extension is granted, the detention of minors under those conditions shall not exceed the duration of the special conditions, plus a period reasonably necessary to accomplish transportation of the minor to a suitable juvenile facility, not to exceed six hours after the restoration of available transportation.

A county that receives an extension under this paragraph shall comply with the requirements set forth in subdivision (d). The county also shall provide a written report to the Department of the Youth Authority that specifies when the inclement weather, act of God, or natural disaster ceased to exist, when transportation availability was restored, and when the minor was delivered to a suitable juvenile facility. In the event that the minor was detained in excess of 24 hours, the Department of the Youth Authority shall verify the information contained in the report.

(2) Under the limited condition of temporary unavailability of transportation, an extension of the six-hour maximum period of detention set forth in paragraph (2) of subdivision (d) may be granted by the Department of the Youth Authority to an offshore law enforcement facility. The extension may be granted only by the Department of the Youth Authority on an individual, case-by-case basis. If the extension is granted, the detention of minors under those conditions shall extend only until the next available mode of transportation can be arranged.

An offshore law enforcement facility that receives an extension under this paragraph shall comply with the requirements set forth in subdivision (d). The facility also shall provide a written report to the Department of the Youth Authority that specifies when the next mode of transportation became available, and when the minor was delivered to a suitable juvenile facility. In the event that the minor

was detained in excess of 24 hours, the Department of the Youth Authority shall verify the information contained in the report.

(3) At least annually, the Department of the Youth Authority shall review and report on extensions sought and granted under this subdivision. If, upon that review, the Department of the Youth Authority determines that a county has sought one or more extensions resulting in the excessive confinement of minors in adult facilities, or that a county is engaged in a pattern and practice of seeking extensions, it shall require the county to submit a detailed explanation of the reasons for the extensions sought and an assessment of the need for a conveniently located and suitable juvenile facility. Upon receiving this information, the Department of the Youth Authority shall make available, and the county shall accept, technical assistance for the purpose of developing suitable alternatives to the confinement of minors in adult lockups. Based upon the information provided by the county, the Department of the Youth Authority also may place limits on, or refuse to grant, future extensions requested by the county under this subdivision.

(h) Any county that did not have a juvenile hall on January 1, 1987, may establish a special purpose juvenile hall, as defined by the Department of the Youth Authority, for the detention of minors for a period not to exceed 96 hours. Any county that had a juvenile hall on January 1, 1987, also may establish, in addition to the juvenile hall, a special purpose juvenile hall. The Department of the Youth Authority shall prescribe minimum standards for any such facility.

(i) (1) "Jail," as used in this chapter, means any building that contains a locked facility administered by a law enforcement or governmental agency, the purpose of which is to detain adults who have been charged with violations of criminal law and are pending trial, or to hold convicted adult criminal offenders sentenced for less than one year.

(2) "Lockup," as used in this chapter, means any locked room or secure enclosure under the control of a sheriff or other peace officer which is primarily for the temporary confinement of adults upon arrest.

(3) "Offshore law enforcement facility," as used in this section, means a sheriff's station containing a lockup for adults that is located on an island located at least 22 miles from the California coastline.

(j) Nothing in this section shall be deemed to prevent a peace officer or employee of an adult detention facility or jail from escorting a minor into the detention facility or jail for the purpose of administering an evaluation, test, or chemical test pursuant to Section 23157 of the Vehicle Code, if all of the following conditions are met:

(1) The minor is taken into custody by a peace officer on the basis of being a person described by Section 602 and there is no equipment for the administration of the evaluation, test, or chemical test located at a juvenile facility within a reasonable distance of the point where the minor was taken into custody.

(2) The minor is not locked in a cell or room within the adult detention facility or jail, is under the continuous, personal supervision of a peace officer or employee of the detention facility or jail, and is not permitted to come in contact or remain in contact with in-custody adults.

(3) The evaluation, test, or chemical test administered pursuant to Section 23157 of the Vehicle Code is performed as expeditiously as possible, so that the minor is not delayed unnecessarily within the adult detention facility or jail. Upon completion of the evaluation, test, or chemical test, the minor shall be removed from the detention facility or jail as soon as reasonably possible. No minor shall be held in custody in an adult detention facility or jail under the authority of this paragraph in excess of two hours.

(k) This section shall remain operative until July 1, 1995, on which date it shall be repealed.

SEC. 2. Section 207.1 of the Welfare and Institutions Code, as added by Section 25 of Chapter 695 of the Statutes of 1992, is amended to read:

207.1. (a) No court, judge, referee, peace officer, or employee of a detention facility shall knowingly detain any minor in a jail or lockup, except as provided in subdivision (b) or (d).

(b) Any minor who is alleged to have committed an offense described in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707, whose case is transferred to a court of criminal jurisdiction pursuant to Section 707.1 after a finding is made that he or she is not a fit and proper subject to be dealt with under the juvenile court law, may be detained in a jail or other secure facility for the confinement of adults, if all of the following conditions are met:

(1) The juvenile court judge makes a finding at the conclusion of the fitness hearing that the minor's further detention in the juvenile hall would endanger the safety of the public or would be detrimental to the other minors in the juvenile hall.

(2) Contact between the minor and adults in the facility is restricted in accordance with Section 208.

(3) The minor is adequately supervised.

(4) The adult facility has been approved by the Department of the Youth Authority as an appropriate place for the detention of minors so transferred.

(c) A minor who is found not to be a fit and proper subject to be dealt with under the juvenile court law, upon the conclusion of the fitness hearing, shall be entitled to be released on bail or on his or her own recognizance upon the same circumstances, terms, and conditions as an adult who is alleged to have committed the same offense.

(d) A minor 14 years of age or older who is taken into temporary custody by a peace officer on the basis of being a person described by Section 602, and who, in the reasonable belief of the peace officer, presents a serious security risk of harm to self or others, may be

securely detained in a law enforcement facility that contains a lockup for adults, if all of the following conditions are met:

(1) The minor is held in temporary custody for the purpose of investigating the case, facilitating release of the minor to a parent or guardian, or arranging transfer of the minor to an appropriate juvenile facility.

(2) The minor is detained in the law enforcement facility for a period that does not exceed six hours except as provided in subdivision (g).

(3) The minor is informed at the time he or she is securely detained of the purpose of the secure detention, of the length of time the secure detention is expected to last, and of the maximum six-hour period the secure detention is authorized to last. In the event an extension is granted pursuant to subdivision (g), the minor shall be informed of the length of time the extension is expected to last.

(4) Contact between the minor and adults confined in the facility is restricted in accordance with Section 208.

(5) The minor is adequately supervised.

(6) A log or other written record is maintained by the law enforcement agency showing the offense which is the basis for the secure detention of the minor in the facility, the reasons and circumstances forming the basis for the decision to place the minor in secure detention, and the length of time the minor was securely detained.

Any other minor who is taken into temporary custody by a peace officer on the basis that the minor is a person described by Section 602, may be taken to a law enforcement facility that contains a lockup for adults and may be held in temporary custody in the facility for the purposes of investigating the case, facilitating the release of the minor to a parent or guardian, or arranging for the transfer of the minor to an appropriate juvenile facility. However, while in the law enforcement facility, the minor may not be securely detained and shall be supervised in a manner so as to ensure that there will be no contact with adults in custody in the facility. If the minor is held in temporary, nonsecure custody within the facility, the peace officer shall exercise one of the dispositional options authorized by Sections 626 and 626.5 without unnecessary delay and, in every case, within six hours.

"Law enforcement facility," as used in this subdivision, includes a police station or a sheriff's station, but does not include a jail, as defined in subdivision (i).

(e) The Department of the Youth Authority shall assist law enforcement agencies, probation departments, and courts with the implementation of this section by doing all of the following:

(1) The Department of the Youth Authority shall advise each law enforcement agency, probation department, and court affected by this section as to its existence and effect.

(2) The Department of the Youth Authority shall make available and, upon request, shall provide technical assistance to each

governmental agency that reported the confinement of a minor in a jail or lockup in calendar year 1984 or 1985. The purpose of this technical assistance is to develop alternatives to the use of jails or lockups for the confinement of minors. These alternatives may include secure or nonsecure facilities located apart from an existing jail or lockup; improved transportation or access to juvenile halls or other juvenile facilities; and other programmatic alternatives recommended by the Department of the Youth Authority. The technical assistance shall take any form the Department of the Youth Authority deems appropriate for effective compliance with this section.

(f) The Department of the Youth Authority may exempt a county that does not have a juvenile hall, or may exempt an offshore law enforcement facility, from compliance with this section for a reasonable period of time, until December 1, 1992, for the purpose of allowing the county or the facility to develop alternatives to the use of jails and lockups for the confinement of minors, if all of the following conditions are met:

(1) The county or the facility submits a written request to the Department of the Youth Authority for an extension of time to comply with this section.

(2) The Department of the Youth Authority agrees to make available, and the county or the facility agrees to accept, technical assistance to develop alternatives to the use of jails and lockups for the confinement of minors during the period of the extension.

(3) The county or the facility requesting the extension submits to the Department of the Youth Authority a written plan for full compliance with this section by September 1, 1987.

(g) (1) Under the limited conditions of inclement weather, acts of God, or natural disasters that result in the temporary unavailability of transportation, an extension of the six-hour maximum period of detention set forth in paragraph (2) of subdivision (d) may be granted to a county by the Department of the Youth Authority. The extensions may only be granted by the Department of the Youth Authority on an individual, case-by-case basis. If the extension is granted, the detention of minors under those conditions shall not exceed the duration of the special conditions, plus a period reasonably necessary to accomplish transportation of the minor to a suitable juvenile facility, not to exceed six hours after the restoration of available transportation.

A county that receives an extension under this paragraph shall comply with the requirements set forth in subdivision (d). The county also shall provide a written report to the Department of the Youth Authority that specifies when the inclement weather, act of God, or natural disaster ceased to exist, when transportation availability was restored, and when the minor was delivered to a suitable juvenile facility. In the event that the minor was detained in excess of 24 hours, the Department of the Youth Authority shall verify the information contained in the report.

(2) Under the limited condition of temporary unavailability of transportation, an extension of the six-hour maximum period of detention set forth in paragraph (2) of subdivision (d) may be granted by the Department of the Youth Authority to an offshore law enforcement facility. The extension may be granted only by the Department of the Youth Authority on an individual, case-by-case basis. If the extension is granted, the detention of minors under those conditions shall extend only until the next available mode of transportation can be arranged.

An offshore law enforcement facility that receives an extension under this paragraph shall comply with the requirements set forth in subdivision (d). The facility also shall provide a written report to the Department of the Youth Authority that specifies when the next mode of transportation became available, and when the minor was delivered to a suitable juvenile facility. In the event that the minor was detained in excess of 24 hours, the Department of the Youth Authority shall verify the information contained in the report.

(3) At least annually, the Department of the Youth Authority shall review and report on extensions sought and granted under this subdivision. If, upon that review, the Department of the Youth Authority determines that a county has sought one or more extensions resulting in the excessive confinement of minors in adult facilities, or that a county is engaged in a pattern and practice of seeking extensions, it shall require the county to submit a detailed explanation of the reasons for the extensions sought and an assessment of the need for a conveniently located and suitable juvenile facility. Upon receiving this information, the Department of the Youth Authority shall make available, and the county shall accept, technical assistance for the purpose of developing suitable alternatives to the confinement of minors in adult lockups. Based upon the information provided by the county, the Department of the Youth Authority also may place limits on, or refuse to grant, future extensions requested by the county under this subdivision.

(h) Any county that did not have a juvenile hall on January 1, 1987, may establish a special purpose juvenile hall, as defined by the Department of the Youth Authority, for the detention of minors for a period not to exceed 96 hours. Any county that had a juvenile hall on January 1, 1987, also may establish, in addition to the juvenile hall, a special purpose juvenile hall. The Department of the Youth Authority shall prescribe minimum standards for any such facility.

(i) (1) "Jail," as used in this chapter, means any building that contains a locked facility administered by a law enforcement or governmental agency, the purpose of which is to detain adults who have been charged with violations of criminal law and are pending trial, or to hold convicted adult criminal offenders sentenced for less than one year.

(2) "Lockup," as used in this chapter, means any locked room or secure enclosure under the control of a sheriff or other peace officer which is primarily for the temporary confinement of adults upon

arrest.

(3) "Offshore law enforcement facility," as used in this section, means a sheriff's station containing a lockup for adults that is located on an island located at least 22 miles from the California coastline.

(j) Nothing in this section shall be deemed to prevent a peace officer or employee of an adult detention facility or jail from escorting a minor into the detention facility or jail for the purpose of administering an evaluation, test, or chemical test pursuant to Section 23157 of the Vehicle Code, if all of the following conditions are met:

(1) The minor is taken into custody by a peace officer on the basis of being a person described by Section 602 and there is no equipment for the administration of the evaluation, test, or chemical test located at a juvenile facility within a reasonable distance of the point where the minor was taken into custody.

(2) The minor is not locked in a cell or room within the adult detention facility or jail, is under the continuous, personal supervision of a peace officer or employee of the detention facility or jail, and is not permitted to come in contact or remain in contact with in-custody adults.

(3) The evaluation, test, or chemical test administered pursuant to Section 23157 of the Vehicle Code is performed as expeditiously as possible, so that the minor is not delayed unnecessarily within the adult detention facility or jail. Upon completion of the evaluation, test, or chemical test, the minor shall be removed from the detention facility or jail as soon as reasonably possible. No minor shall be held in custody in an adult detention facility or jail under the authority of this paragraph in excess of two hours.

(k) This section shall become operative on July 1, 1995.

SEC. 2.5. Section 207.1 of the Welfare and Institutions Code, as added by Section 25 of Chapter 695 of the Statutes of 1992, is amended to read:

207.1. (a) No court, judge, referee, peace officer, or employee of a detention facility shall knowingly detain any minor in a jail or lockup, except as provided in subdivision (b) or (d).

(b) Any minor who is alleged to have committed an offense described in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 whose case is transferred to a court of criminal jurisdiction pursuant to Section 707.1 after a finding is made that he or she is not a fit and proper subject to be dealt with under the juvenile court law, or any minor who has been charged directly in or transferred to a court of criminal jurisdiction pursuant to Section 707.01, may be detained in a jail or other secure facility for the confinement of adults, if all of the following conditions are met:

(1) The juvenile court or the court of criminal jurisdiction makes a finding that the minor's further detention in the juvenile hall would endanger the safety of the public or would be detrimental to the other minors in the juvenile hall.

(2) Contact between the minor and adults in the facility is

restricted in accordance with Section 208.

(3) The minor is adequately supervised.

(4) The adult facility has been approved by the Department of the Youth Authority as an appropriate place for the detention of minors so transferred.

(c) A minor who is either found not to be a fit and proper subject to be dealt with under the juvenile court law or who will be transferred to a court of criminal jurisdiction pursuant to Section 707.01 at the time of transfer to a court of criminal jurisdiction or at the conclusion of the fitness hearing, as the case may be, shall be entitled to be released on bail or on his or her own recognizance upon the same circumstances, terms, and conditions as an adult who is alleged to have committed the same offense.

(d) A minor 14 years of age or older who is taken into temporary custody by a peace officer on the basis of being a person described by Section 602, and who, in the reasonable belief of the peace officer, presents a serious security risk of harm to self or others, may be securely detained in a law enforcement facility that contains a lockup for adults, if all of the following conditions are met:

(1) The minor is held in temporary custody for the purpose of investigating the case, facilitating release of the minor to a parent or guardian, or arranging transfer of the minor to an appropriate juvenile facility.

(2) The minor is detained in the law enforcement facility for a period that does not exceed six hours except as provided in subdivision (g).

(3) The minor is informed at the time he or she is securely detained of the purpose of the secure detention, of the length of time the secure detention is expected to last, and of the maximum six-hour period the secure detention is authorized to last. In the event an extension is granted pursuant to subdivision (g), the minor shall be informed of the length of time the extension is expected to last.

(4) Contact between the minor and adults confined in the facility is restricted in accordance with Section 208.

(5) The minor is adequately supervised.

(6) A log or other written record is maintained by the law enforcement agency showing the offense which is the basis for the secure detention of the minor in the facility, the reasons and circumstances forming the basis for the decision to place the minor in secure detention, and the length of time the minor was securely detained.

Any other minor who is taken into temporary custody by a peace officer on the basis that the minor is a person described by Section 602, may be taken to a law enforcement facility that contains a lockup for adults and may be held in temporary custody in the facility for the purposes of investigating the case, facilitating the release of the minor to a parent or guardian, or arranging for the transfer of the minor to an appropriate juvenile facility. However, while in the law enforcement facility, the minor may not be securely detained and

shall be supervised in a manner so as to ensure that there will be no contact with adults in custody in the facility. If the minor is held in temporary, nonsecure custody within the facility, the peace officer shall exercise one of the dispositional options authorized by Sections 626 and 626.5 without unnecessary delay and, in every case, within six hours.

"Law enforcement facility," as used in this subdivision, includes a police station or a sheriff's station, but does not include a jail, as defined in subdivision (i).

(e) The Department of the Youth Authority shall assist law enforcement agencies, probation departments, and courts with the implementation of this section by doing all of the following:

(1) The Department of the Youth Authority shall advise each law enforcement agency, probation department, and court affected by this section as to its existence and effect.

(2) The Department of the Youth Authority shall make available and, upon request, shall provide technical assistance to each governmental agency that reported the confinement of a minor in a jail or lockup in calendar year 1984 or 1985. The purpose of this technical assistance is to develop alternatives to the use of jails or lockups for the confinement of minors. These alternatives may include secure or nonsecure facilities located apart from an existing jail or lockup; improved transportation or access to juvenile halls or other juvenile facilities; and other programmatic alternatives recommended by the Department of the Youth Authority. The technical assistance shall take any form the Department of the Youth Authority deems appropriate for effective compliance with this section.

(f) The Department of the Youth Authority may exempt a county that does not have a juvenile hall, or may exempt an offshore law enforcement facility, from compliance with this section for a reasonable period of time, until December 1, 1992, for the purpose of allowing the county or the facility to develop alternatives to the use of jails and lockups for the confinement of minors, if all of the following conditions are met:

(1) The county or the facility submits a written request to the Department of the Youth Authority for an extension of time to comply with this section.

(2) The Department of the Youth Authority agrees to make available, and the county or the facility agrees to accept, technical assistance to develop alternatives to the use of jails and lockups for the confinement of minors during the period of the extension.

(3) The county or the facility requesting the extension submits to the Department of the Youth Authority a written plan for full compliance with this section by September 1, 1987.

(g) (1) Under the limited conditions of inclement weather, acts of God, or natural disasters that result in the temporary unavailability of transportation, an extension of the six-hour maximum period of detention set forth in paragraph (2) of subdivision (d) may be

granted to a county by the Department of the Youth Authority. The extensions may only be granted by the Department of the Youth Authority on an individual, case-by-case basis. If the extension is granted, the detention of minors under those conditions shall not exceed the duration of the special conditions, plus a period reasonably necessary to accomplish transportation of the minor to a suitable juvenile facility, not to exceed six hours after the restoration of available transportation.

A county that receives an extension under this paragraph shall comply with the requirements set forth in subdivision (d). The county also shall provide a written report to the Department of the Youth Authority that specifies when the inclement weather, act of God, or natural disaster ceased to exist, when transportation availability was restored, and when the minor was delivered to a suitable juvenile facility. In the event that the minor was detained in excess of 24 hours, the Department of the Youth Authority shall verify the information contained in the report.

(2) Under the limited condition of temporary unavailability of transportation, an extension of the six-hour maximum period of detention set forth in paragraph (2) of subdivision (d) may be granted by the Department of the Youth Authority to an offshore law enforcement facility. The extension may be granted only by the Department of the Youth Authority on an individual, case-by-case basis. If the extension is granted, the detention of minors under those conditions shall extend only until the next available mode of transportation can be arranged.

An offshore law enforcement facility that receives an extension under this paragraph shall comply with the requirements set forth in subdivision (d). The facility also shall provide a written report to the Department of the Youth Authority that specifies when the next mode of transportation became available, and when the minor was delivered to a suitable juvenile facility. In the event that the minor was detained in excess of 24 hours, the Department of the Youth Authority shall verify the information contained in the report.

(3) At least annually, the Department of the Youth Authority shall review and report on extensions sought and granted under this subdivision. If, upon that review, the Department of the Youth Authority determines that a county has sought one or more extensions resulting in the excessive confinement of minors in adult facilities, or that a county is engaged in a pattern and practice of seeking extensions, it shall require the county to submit a detailed explanation of the reasons for the extensions sought and an assessment of the need for a conveniently located and suitable juvenile facility. Upon receiving this information, the Department of the Youth Authority shall make available, and the county shall accept, technical assistance for the purpose of developing suitable alternatives to the confinement of minors in adult lockups. Based upon the information provided by the county, the Department of the Youth Authority also may place limits on, or refuse to grant, future

extensions requested by the county under this subdivision.

(h) Any county that did not have a juvenile hall on January 1, 1987, may establish a special purpose juvenile hall, as defined by the Department of the Youth Authority, for the detention of minors for a period not to exceed 96 hours. Any county that had a juvenile hall on January 1, 1987, also may establish, in addition to the juvenile hall, a special purpose juvenile hall. The Department of the Youth Authority shall prescribe minimum standards for any such facility.

(i) (1) "Jail," as used in this chapter, means any building that contains a locked facility administered by a law enforcement or governmental agency, the purpose of which is to detain adults who have been charged with violations of criminal law and are pending trial, or to hold convicted adult criminal offenders sentenced for less than one year.

(2) "Lockup," as used in this chapter, means any locked room or secure enclosure under the control of a sheriff or other peace officer which is primarily for the temporary confinement of adults upon arrest.

(3) "Offshore law enforcement facility," as used in this section, means a sheriff's station containing a lockup for adults that is located on an island located at least 22 miles from the California coastline.

(j) Nothing in this section shall be deemed to prevent a peace officer or employee of an adult detention facility or jail from escorting a minor into the detention facility or jail for the purpose of administering an evaluation, test, or chemical test pursuant to Section 23157 of the Vehicle Code, if all of the following conditions are met:

(1) The minor is taken into custody by a peace officer on the basis of being a person described by Section 602 and there is no equipment for the administration of the evaluation, test, or chemical test located at a juvenile facility within a reasonable distance of the point where the minor was taken into custody.

(2) The minor is not locked in a cell or room within the adult detention facility or jail, is under the continuous, personal supervision of a peace officer or employee of the detention facility or jail, and is not permitted to come in contact or remain in contact with in-custody adults.

(3) The evaluation, test, or chemical test administered pursuant to Section 23157 of the Vehicle Code is performed as expeditiously as possible, so that the minor is not delayed unnecessarily within the adult detention facility or jail. Upon completion of the evaluation, test, or chemical test, the minor shall be removed from the detention facility or jail as soon as reasonably possible. No minor shall be held in custody in an adult detention facility or jail under the authority of this paragraph in excess of two hours.

(k) This section shall become operative on July 1, 1995.

SEC. 2.7. Section 211 of the Welfare and Institutions Code is amended to read:

211. (a) No person under the age of 14 years shall be committed

to a state prison or be transferred thereto from any other institution.

(b) Notwithstanding any other provision of law, no person under the age of 16 years shall be housed in any facility under the jurisdiction of the Department of Corrections.

SEC. 3. Section 607 of the Welfare and Institutions Code is amended to read:

607. (a) The court may retain jurisdiction over any person who is found to be a ward or dependent child of the juvenile court until the ward or dependent child attains the age of 21 years, except as provided in subdivisions (b), (c), and (d).

(b) The court may retain jurisdiction over any person who is found to be a person described in Section 602 by reason of the commission of any of the offenses listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 until that person attains the age of 25 years if the person was committed to the Department of the Youth Authority.

(c) The court shall not discharge any person from its jurisdiction who has been committed to the Department of the Youth Authority so long as the person remains under the jurisdiction of the Department of the Youth Authority, including periods of extended control ordered pursuant to Section 1800.

(d) The court may retain jurisdiction over any person described in Section 602 by reason of the commission of any of the offenses listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 who has been confined in a state hospital or other appropriate public or private mental health facility pursuant to Section 702.3 until that person has attained the age of 25 years, unless the court which committed the person finds, after notice and hearing, that the person's sanity has been restored.

(e) The court may retain jurisdiction over any person while that person is the subject of a warrant for arrest issued pursuant to Section 663.

SEC. 4. Section 653.1 of the Welfare and Institutions Code is amended to read:

653.1. Notwithstanding Section 653, in the case of an affidavit alleging that the minor committed an offense described in Section 602, the probation officer shall cause the affidavit to be immediately taken to the prosecuting attorney if it appears to the probation officer that the minor has been referred to the probation officer for any violation of either an offense listed in subdivision (b) of Section 707 and that offense was allegedly committed when the minor was 16 years of age or older or an offense listed in paragraph (2) of subdivision (d) or subdivision (e) of Section 707 and that offense was allegedly committed when the minor was 14 years of age or older. If the prosecuting attorney decides not to file a petition, he or she may return the affidavit to the probation officer for any other appropriate action.

SEC. 5. Section 653.5 of the Welfare and Institutions Code, as amended by Section 15 of Chapter 1125 of the Statutes of 1993, is

amended to read:

653.5. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer may make any investigation he or she deems necessary to determine whether proceedings in the juvenile court shall be commenced.

(b) Except as provided in subdivision (c), if the probation officer determines that proceedings pursuant to Section 650 should be commenced to declare a person to be a ward of the juvenile court on the basis that he or she is a person described in Section 602, the probation officer may cause the affidavit to be taken to the prosecuting attorney.

(c) Notwithstanding subdivision (b), the probation officer may cause the affidavit to be taken within 48 hours to the prosecuting attorney in all of the following cases:

(1) If it appears to the probation officer that the minor has been referred to the probation officer for any violation of an offense listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707.

(2) If it appears to the probation officer that the minor is under 14 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer.

(3) If it appears to the probation officer that the minor was 14 years of age or older at the date of the offense and that the offense constitutes a felony referral to the probation officer.

(4) If it appears to the probation officer that the minor has been referred to the probation officer for the sale or possession for sale of a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(5) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(6) If it appears to the probation officer that the minor was 14 years of age or older at the date of the offense and the offense for which the referral was made constitutes a violation of Section 487h of the Penal Code or Section 10851 of the Vehicle Code.

(7) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 186.22 of the Penal Code.

(8) If it appears to the probation officer that the minor has previously been placed in a program of informal probation pursuant to Section 654.

(9) If it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds one thousand dollars ($1,000). For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 729.6 and "restitution" in subdivision (d) of Section 729.6 shall apply.

Except for offenses listed in paragraph (5), the provisions of subdivision (c) shall not apply to a narcotics and drug offense set forth in Section 1000 of the Penal Code.

The prosecuting attorney shall within his or her discretionary power institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 and Section 26500 of the Government Code. However, if it appears to the prosecuting attorney that the affidavit was not properly referred, that the offense for which the minor was referred should be charged as a misdemeanor, or that the minor may benefit from a program of informal supervision, he or she shall refer the matter to the probation officer for whatever action the probation officer may deem appropriate.

(d) In all matters where the minor is not in custody and is already a ward of the court or a probationer under Section 602, the prosecuting attorney, within five judicial days of receipt of the affidavit from the probation officer, shall institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 of this code and Section 26500 of the Government Code, unless it appears to the prosecuting attorney that the affidavit was not properly referred or that the offense for which the minor was referred requires additional substantiating information, in which case he or she shall immediately notify the probation officer of what further action he or she is taking.

(e) This section shall remain in effect only until January 1, 1997, and as of that date is repealed.

SEC. 5.5. Section 653.5 of the Welfare and Institutions Code, as amended by Section 15 of Chapter 1125 of the Statutes of 1993, is amended to read:

653.5. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer shall immediately make any investigation he or she deems necessary to determine whether proceedings in the juvenile court shall be commenced.

(b) Except as provided in subdivision (c), if the probation officer determines that proceedings pursuant to Section 650 should be commenced to declare a person to be a ward of the juvenile court on the basis that he or she is a person described in Section 602, the probation officer shall cause the affidavit to be taken to the

prosecuting attorney.

(c) Notwithstanding subdivision (b), the probation officer shall cause the affidavit to be taken within 48 hours to the prosecuting attorney in all of the following cases:

(1) If it appears to the probation officer that the minor has been referred to the probation officer for any violation of an offense listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707.

(2) If it appears to the probation officer that the minor is under 14 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer.

(3) If it appears to the probation officer that the minor was 14 years of age or older at the date of the offense and that the offense constitutes a felony referral to the probation officer.

(4) If it appears to the probation officer that the minor has been referred to the probation officer for the sale or possession for sale of a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(5) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(6) If it appears to the probation officer that the minor was 14 years of age or older at the date of the offense and the offense for which the referral was made constitutes a violation of Section 487h of the Penal Code or Section 10851 of the Vehicle Code.

(7) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 186.22 of the Penal Code.

(8) If it appears to the probation officer that the minor has previously been placed in a program of informal probation pursuant to Section 654.

(9) If it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds one thousand dollars ($1,000). For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 729.6 and "restitution" in subdivision (d) of Section 729.6 shall apply.

Except for offenses listed in paragraph (5), the provisions of subdivision (c) shall not apply to a narcotics and drug offense set forth in Section 1000 of the Penal Code.

The prosecuting attorney shall within his or her discretionary power institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 and Section 26500 of the Government Code. However, if it appears to the prosecuting attorney that the affidavit was not properly referred, that the offense for which the minor was referred should be charged

as a misdemeanor, or that the minor may benefit from a program of informal supervision, he or she shall refer the matter to the probation officer for whatever action the probation officer may deem appropriate.

(d) In all matters where the minor is not in custody and is already a ward of the court or a probationer under Section 602, the prosecuting attorney, within five judicial days of receipt of the affidavit from the probation officer, shall institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 of this code and Section 26500 of the Government Code, unless it appears to the prosecuting attorney that the affidavit was not properly referred or that the offense for which the minor was referred requires additional substantiating information, in which case he or she shall immediately notify the probation officer of what further action he or she is taking.

(e) This section shall remain in effect only until January 1, 1997, and as of that date is repealed.

SEC. 6. Section 653.5 of the Welfare and Institutions Code, as added by Section 16 Chapter 1125 of the Statutes of 1993, is amended to read:

653.5. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer may make any investigation he or she deems necessary to determine whether proceedings in the juvenile court shall be commenced.

(b) Except as provided in subdivision (c), if the probation officer determines that proceedings pursuant to Section 650 should be commenced to declare a person to be a ward of the juvenile court on the basis that he or she is a person described in Section 602, the probation officer may cause the affidavit to be taken to the prosecuting attorney.

(c) Notwithstanding subdivision (b), the probation officer may cause the affidavit to be taken within 48 hours to the prosecuting attorney in all of the following cases:

(1) If it appears to the probation officer that the minor has been referred to the probation officer for any violation of an offense listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707.

(2) If it appears to the probation officer that the minor is under 14 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer.

(3) If it appears to the probation officer that the minor was 14 years of age or older at the date of the offense and that the offense constitutes a felony referral to the probation officer.

(4) If it appears to the probation officer that the minor has been

referred to the probation officer for the sale or possession for sale of a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(5) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(6) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 186.22 of the Penal Code.

(7) If it appears to the probation officer that the minor has previously been placed in a program of informal probation pursuant to Section 654.

(8) If it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds one thousand dollars ($1,000). For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 729.6 and "restitution" in subdivision (d) of Section 729.6 shall apply.

Except for offenses listed in paragraph (5), the provisions of subdivision (c) shall not apply to a narcotics and drug offense set forth in Section 1000 of the Penal Code.

The prosecuting attorney shall within his or her discretionary power institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 and Section 26500 of the Government Code. However, if it appears to the prosecuting attorney that the affidavit was not properly referred, that the offense for which the minor was referred should be charged as a misdemeanor, or that the minor may benefit from a program of informal supervision, he or she shall refer the matter to the probation officer for whatever action the probation officer may deem appropriate.

(d) In all matters where the minor is not in custody and is already a ward of the court or a probationer under Section 602, the prosecuting attorney, within five judicial days of receipt of the affidavit from the probation officer, shall institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 of this code and Section 26500 of the Government Code, unless it appears to the prosecuting attorney that the affidavit was not properly referred or that the offense for which the minor was referred requires additional substantiating information, in which case he or she shall immediately notify the probation officer of what further action he or she is taking.

(e) This section shall become operative on January 1, 1997.

SEC. 6.5. Section 653.5 of the Welfare and Institutions Code, as added by Section 16 of Chapter 1125 of the Statutes of 1993, is amended to read:

653.5. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer shall immediately make any investigation he or she deems necessary to determine whether proceedings in the juvenile court shall be commenced.

(b) Except as provided in subdivision (c), if the probation officer determines that proceedings pursuant to Section 650 should be commenced to declare a person to be a ward of the juvenile court on the basis that he or she is a person described in Section 602, the probation officer shall cause the affidavit to be taken to the prosecuting attorney.

(c) Notwithstanding subdivision (b), the probation officer shall cause the affidavit to be taken within 48 hours to the prosecuting attorney in all of the following cases:

(1) If it appears to the probation officer that the minor has been referred to the probation officer for any violation of an offense listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707.

(2) If it appears to the probation officer that the minor is under 14 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer.

(3) If it appears to the probation officer that the minor was 14 years of age or older at the date of the offense and that the offense constitutes a felony referral to the probation officer.

(4) If it appears to the probation officer that the minor has been referred to the probation officer for the sale or possession for sale of a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(5) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(6) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 186.22 of the Penal Code.

(7) If it appears to the probation officer that the minor has previously been placed in a program of informal probation pursuant to Section 654.

(8) If it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds one thousand dollars ($1,000). For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 729.6 and "restitution" in subdivision (d) of Section

729.6 shall apply.

Except for offenses listed in paragraph (5), the provisions of subdivision (c) shall not apply to a narcotics and drug offense set forth in Section 1000 of the Penal Code.

The prosecuting attorney shall within his or her discretionary power institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 and Section 26500 of the Government Code. However, if it appears to the prosecuting attorney that the affidavit was not properly referred, that the offense for which the minor was referred should be charged as a misdemeanor, or that the minor may benefit from a program of informal supervision, he or she shall refer the matter to the probation officer for whatever action the probation officer may deem appropriate.

(d) In all matters where the minor is not in custody and is already a ward of the court or a probationer under Section 602, the prosecuting attorney, within five judicial days of receipt of the affidavit from the probation officer, shall institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 of this code and Section 26500 of the Government Code, unless it appears to the prosecuting attorney that the affidavit was not properly referred or that the offense for which the minor was referred requires additional substantiating information, in which case he or she shall immediately notify the probation officer of what further action he or she is taking.

(e) This section shall become operative on January 1, 1997.

SEC. 7. Section 654.3 of the Welfare and Institutions Code is amended to read:

654.3. No minor shall be eligible for the program of supervision set forth in Section 654 or 654.2 in the following cases, except in an unusual case where the interests of justice would best be served and the court specifies on the record the reasons for its decision:

(a) A petition alleges that the minor has violated an offense listed in subdivision (b) or (e) or paragraph (2) of subdivision (d) of Section 707.

(b) A petition alleges that the minor has sold or possessed for sale a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(c) A petition alleges that the minor has violated Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(d) A petition alleges that the minor has violated Section 186.22 of the Penal Code.

(e) The minor has previously participated in a program of supervision pursuant to Section 654.

(f) The minor has previously been adjudged a ward of the court pursuant to Section 602.

(g) A petition alleges that the minor has violated an offense in which the restitution owed to the victim exceeds one thousand dollars ($1,000). For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 729.6 and "restitution" in subdivision (d) of Section 729.6 shall apply.

SEC. 8. Section 676 of the Welfare and Institutions Code is amended to read:

676. (a) Unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. Nothing in this section shall preclude the attendance of up to two family members of a prosecuting witness for the support of that witness, as authorized by Section 868.5 of the Penal Code. The judge or referee may nevertheless admit those persons he or she deems to have a direct and legitimate interest in the particular case or the work of the court. However, except as provided in subdivision (b), members of the public shall be admitted, on the same basis as they may be admitted to trials in a court of criminal jurisdiction, to hearings concerning petitions filed pursuant to Section 602 alleging that a minor is a person described in Section 602 by reason of the violation of any one of the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(7) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(8) Kidnapping for ransom.

(9) Kidnapping for purpose of robbery.

(10) Kidnapping with bodily harm.

(11) Assault with intent to murder or attempted murder.

(12) Assault with a firearm or destructive device.

(13) Assault by any means of force likely to produce great bodily injury.

(14) Discharge of a firearm into an inhabited or occupied building.

(15) Any offense described in Section 1203.09 of the Penal Code.

(16) Any offense described in Section 12022.5 of the Penal Code.

(17) Any felony offense in which a minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(18) Burglary of an inhabited dwelling house or trailer coach, as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, if the minor previously has been adjudged a ward of the court by reason of the commission of any offense listed in this section, including an offense listed in this paragraph.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Any offense as specified in Sections 11351, 11351.5, 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and Safety Code.

(21) Criminal street gang activity which constitutes a felony pursuant to Section 186.22 of the Penal Code.

(22) Manslaughter as specified in Section 192 of the Penal Code.

(23) Driveby shooting or discharge of a weapon from or at a motor vehicle as specified in Sections 246, 247, and 12034 of the Penal Code.

(24) Any crime committed with an assault weapon, as defined in Section 12276 of the Penal Code, including possession of an assault weapon as specified in subdivision (b) of Section 12280 of the Penal Code.

(25) Carjacking, while armed with a dangerous or deadly weapon.

(26) Kidnapping, in violation of Section 209.5 of the Penal Code.

(27) Torture, as described in Sections 206 and 206.1 of the Penal Code.

(28) Aggravated mayhem, in violation of Section 205 of the Penal Code.

(b) Where the petition filed alleges that the minor is a person described in Section 602 by reason of the commission of rape with force or violence or great bodily harm; sodomy by force, violence, duress, menace, or threat of great bodily harm; oral copulation by force, violence, duress, menace, or threat of great bodily harm; or any offense specified in Section 289 of the Penal Code, members of the public shall not be admitted to the hearing in either of the following instances:

(1) Upon a motion for a closed hearing by the district attorney, who shall make the motion if so requested by the victim.

(2) During the victim's testimony, if, at the time of the offense the victim was under 16 years of age.

(c) The name of a minor found to have committed one of the offenses listed in subdivision (a) shall not be confidential, unless the court, for good cause, so orders.

(d) Notwithstanding Sections 827 and 828 and subject to subdivisions (e) and (f), when a petition is sustained for any offense listed in subdivision (a), the charging petition, the minutes of the proceeding, and the orders of adjudication and disposition of the court that are contained in the court file shall be available for public inspection. Nothing in this subdivision shall be construed to authorize public access to any other documents in the court file.

(e) The probation officer or any party may petition the juvenile court to prohibit disclosure to the public of any file or record. The juvenile court shall prohibit the disclosure if it appears that the harm to the minor, victims, witnesses, or public from the public disclosure outweighs the benefit of public knowledge.

(f) Nothing in this section shall be applied to limit the disclosure of information as otherwise provided for by law.

SEC. 9. Section 707 of the Welfare and Institutions Code is

amended to read:

707. (a) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at the hearing.

(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses:

(1) Murder.

(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purpose of robbery.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) Any offense described in Section 1203.09 of the Penal Code.

(17) Any offense described in Section 12022.5 of the Penal Code.

(18) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(21) Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture, as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem, as described in Section 205 of the Penal Code.

(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(26) Kidnapping, as punishable in subdivision (d) of Section 208 of the Penal Code.

(27) Kidnapping, as punishable in Section 209.5 of the Penal Code.

(28) The offense described in subdivision (c) of Section 12034 of the Penal Code.

(29) The offense described in Section 12308 of the Penal Code.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court

concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

(d) (1) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of any of the offenses set forth in paragraph (2), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(A) The degree of criminal sophistication exhibited by the minor

(B) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(C) The minor's previous delinquent history.

(D) Success of previous attempts by the juvenile court to rehabilitate the minor.

(E) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is not a fit and proper subject to

be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this subdivision, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea that may already have been entered shall constitute evidence at the hearing.

(2) Paragraph (1) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of one of the following offenses:

(A) Murder.

(B) Robbery in which the minor personally used a firearm.

(C) Rape with force or violence or threat of great bodily harm.

(D) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(E) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(F) The offense specified in subdivision (a) of Section 289 of the Penal Code.

(G) Kidnapping for ransom.

(H) Kidnapping for purpose of robbery.

(I) Kidnapping with bodily harm.

(J) Kidnapping, as punishable in subdivision (d) of Section 208 of the Penal Code.

(K) The offense described in subdivision (c) of Section 12034 of the Penal Code, in which the minor personally used a firearm.

(L) Personally discharging a firearm into an inhabited or occupied building.

(M) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(N) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(O) Torture, as described in Section 206 of the Penal Code.

(P) Aggravated mayhem, as described in Section 205 of the Penal Code.

(Q) Assault with a firearm in which the minor personally used the firearm.

(R) Attempted murder.

(S) Rape in which the minor personally used a firearm.

(T) Burglary in which the minor personally used a firearm.

(U) Kidnapping in which the minor personally used a firearm.

(V) The offense described in Section 12308 of the Penal Code.

(W) Kidnapping, in violation of Section 209.5 of the Penal Code.

(X) Carjacking, in which the minor personally used a firearm.

(e) This subdivision shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of the offense of murder in which it is alleged in the petition that one of the following exists:

(1) In the case of murder in the first or second degree, the minor personally killed the victim.

(2) In the case of murder in the first or second degree, the minor, acting with the intent to kill the victim, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted any person to kill the victim.

(3) In the case of murder in the first degree, while not the actual killer, the minor, acting with reckless indifference to human life and as a major participant in a felony enumerated in paragraph (17) of subdivision (a) of Section 190.2, or an attempt to commit that felony, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted in the commission or attempted commission of that felony and the commission or attempted commission of that felony or the immediate flight therefrom resulted in the death of the victim.

Upon motion of the petitioner made prior to the attachment of jeopardy, the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed

pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

(f) If, subsequent to a finding that a minor is an unfit subject to be dealt with under the juvenile court law, the minor is convicted in a court of criminal jurisdiction of an offense listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of this section or listed in paragraph (24) of subdivision (c) of Section 1192.7 of the Penal Code, the finding of unfitness which preceded the conviction is applicable to the violation of any law or ordinance defining crime which is alleged to have been committed subsequent to the conviction if the violation would otherwise cause the minor to be a person described in Section 602. The probation officer shall not be required to investigate or submit a report regarding the fitness of a minor for the subsequent charge. This subdivision shall not be construed to affect the right to appellate review of a finding of unfitness or the duration of the jurisdiction of the juvenile court as specified in Section 607.

SEC. 9.5. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking

of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at the hearing.

(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses:

(1) Murder.

(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purpose of robbery.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) Any offense described in Section 1203.09 of the Penal Code.

(17) Any offense described in Section 12022.5 of the Penal Code.

(18) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(21) Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem, as described in Section 205 of the Penal

Code.

(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(26) Kidnapping, as punishable in subdivision (d) of Section 208 of the Penal Code.

(27) Kidnapping, as punishable in Section 209.5 of the Penal Code.

(28) The offense described in subdivision (c) of Section 12034 of the Penal Code.

(29) The offense described in Section 12308 of the Penal Code.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

(d) (1) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of any of the offenses set forth in paragraph (2), upon motion

of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(A) The degree of criminal sophistication exhibited by the minor.

(B) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(C) The minor's previous delinquent history.

(D) Success of previous attempts by the juvenile court to rehabilitate the minor.

(E) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this subdivision, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea that may already have been entered shall constitute evidence at the hearing.

(2) Paragraph (1) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of one of the following offenses:

(A) Murder.

(B) Robbery in which the minor personally used a firearm.

(C) Rape with force or violence or threat of great bodily harm.

(D) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(E) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(F) The offense specified in subdivision (a) of Section 289 of the Penal Code.

(G) Kidnapping for ransom.

(H) Kidnapping for purpose of robbery.

(I) Kidnapping with bodily harm.

(J) Kidnapping, as punishable in subdivision (d) of Section 208 of the Penal Code.

(K) The offense described in subdivision (c) of Section 12034 of the Penal Code, in which the minor personally used a firearm.

(L) Personally discharging a firearm into an inhabited or occupied building.

(M) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(N) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(O) Torture, as described in Section 206 of the Penal Code.

(P) Aggravated mayhem, as described in Section 205 of the Penal Code.

(Q) Assault with a firearm in which the minor personally used the firearm.

(R) Attempted murder.

(S) Rape in which the minor personally used a firearm.

(T) Burglary in which the minor personally used a firearm.

(U) Kidnapping in which the minor personally used a firearm.

(V) The offense described in Section 12308 of the Penal Code.

(W) Kidnapping, in violation of Section 209.5 of the Penal Code.

(X) Carjacking, in which the minor personally used a firearm.

(e) This subdivision shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of the offense of murder in which it is alleged in the petition that one of the following exists:

(1) In the case of murder in the first or second degree, the minor personally killed the victim.

(2) In the case of murder in the first or second degree, the minor, acting with the intent to kill the victim, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted any person to kill the victim.

(3) In the case of murder in the first degree, while not the actual killer, the minor, acting with reckless indifference to human life and as a major participant in a felony enumerated in paragraph (17) of subdivision (a) of Section 190.2, or an attempt to commit that felony, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted in the commission or attempted commission of that felony and the commission or attempted commission of that felony or the immediate flight therefrom resulted in the death of the victim.

Upon motion of the petitioner made prior to the attachment of jeopardy, the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may

be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(A) The degree of criminal sophistication exhibited by the minor.

(B) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(C) The minor's previous delinquent history.

(D) Success of previous attempts by the juvenile court to rehabilitate the minor.

(E) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

SEC. 10. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at the hearing.

(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purpose of robbery.

(11) Kidnapping with bodily harm.

(12) Assault with intent to murder or attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) Any offense described in Section 1203.09 of the Penal Code.

(17) Any offense described in Section 12022.5 of the Penal Code.

(18) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(21) Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility

during the commission of the escape.

(23) Torture as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem as described in Section 205 of the Penal Code.

(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(26) Kidnapping, as punishable in subdivision (d) of Section 208 of the Penal Code.

(27) Kidnapping, as punishable in Section 209.5 of the Penal Code.

(28) The offense described in subdivision (c) of Section 12034 of the Penal Code.

(29) The offense described in Section 12308 of the Penal Code.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

(d) If, subsequent to a finding that a minor is an unfit subject to be dealt with under the juvenile court law, the minor is convicted in a court of criminal jurisdiction of an offense listed in subdivision (b) of this section or listed in paragraph (24) of subdivision (c) of Section 1192.7 of the Penal Code, the finding of unfitness which preceded the conviction is applicable to the violation of any law or ordinance defining crime which is alleged to have been committed subsequent to the conviction if the violation would otherwise cause the minor to be a person described in Section 602. The probation officer shall not be required to investigate or submit a report regarding the fitness of a minor for the subsequent charge. This subdivision shall not be construed to affect the right to appellate review of a finding of unfitness or the duration of the jurisdiction of the juvenile court as specified in Section 607.

SEC. 10.5. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at the hearing.

(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of

the violation, when he or she was 16 years of age or older, of one of the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purpose of robbery.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) Any offense described in Section 1203.09 of the Penal Code.

(17) Any offense described in Section 12022.5 of the Penal Code.

(18) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(21) Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem as described in Section 205 of the Penal Code.

(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(26) Kidnapping, as punishable in subdivision (d) of Section 208 of the Penal Code.

(27) Kidnapping, as punishable in Section 209.5 of the Penal Code.

(28) The offense described in subdivision (c) of Section 12034 of the Penal Code.

(29) The offense described in Section 12308 of the Penal Code.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

SEC. 10.8. Section 707.01 is added to the Welfare and Institutions Code, to read:

707.01. (a) If a minor is found an unfit subject to be dealt with under the juvenile court law pursuant to Section 707, then the following shall apply:

(1) The jurisdiction of the juvenile court with respect to any previous adjudication resulting in the minor being made a ward of the juvenile court that did not result in the minor's commitment to the Youth Authority shall not terminate, unless a hearing is held pursuant to Section 785 and the jurisdiction of the juvenile court over

the minor is terminated.

(2) The jurisdiction of the juvenile court and the Youth Authority with respect to any previous adjudication resulting in the minor being made a ward of the juvenile court that resulted in the minor's commitment to the Youth Authority shall not terminate.

(3) All petitions pending against the minor shall be transferred to the court of criminal jurisdiction where one of the following applies:

(A) Jeopardy has not attached and the minor was 16 years of age or older at the time he or she is alleged to have violated the criminal statute or ordinance.

(B) Jeopardy has not attached and the minor is alleged to have violated a criminal statute for which he or she may be presumed or may be found to be not a fit and proper subject to be dealt with under the juvenile court law.

(4) All petitions pending against the minor shall be disposed of in the juvenile court pursuant to the juvenile court law, where one of the following applies:

(A) Jeopardy has attached.

(B) The minor was under 16 years of age at the time he or she is alleged to have violated a criminal statute for which he or she may not be presumed or may not be found to be not a fit and proper subject to be dealt with under the juvenile court law.

(5) If, subsequent to a finding that a minor is an unfit subject to be dealt with under the juvenile court law, the minor is convicted of the violations which were the subject of the proceeding that resulted in a finding of unfitness, a new petition or petitions alleging the violation of any law or ordinance defining crime which would otherwise cause the minor to be a person described in Section 602 committed by the minor prior to or after the finding of unfitness need not be filed in the juvenile court if one of the following applies:

(A) The minor was 16 years of age or older at the time he or she is alleged to have violated a criminal statute or ordinance.

(B) The minor is alleged to have violated a criminal statute for which he or she may be presumed or may be found to be not a fit and proper subject to be dealt with under the juvenile court law.

(6) Subsequent to a finding that a minor is an unfit subject to be dealt with under the juvenile court law, which finding was based solely on either or both the minor's previous delinquent history or a lack of success of previous attempts by the juvenile court to rehabilitate the minor, and the minor was not convicted of the offense, a new petition or petitions alleging the violation of any law or ordinance defining crime which would otherwise cause the minor to be a person described in Section 602 committed by the minor prior to or after the finding of unfitness need not be filed in the juvenile court if one of the following applies:

(A) The minor was 16 years of age or older at the time he or she is alleged to have violated a criminal statute or ordinance.

(B) The minor is alleged to have violated a criminal statute for which he or she may be presumed or may be found to be not a fit

and proper subject to be dealt with under the juvenile court law.

(7) If, subsequent to a finding that a minor is an unfit subject to be dealt with under the juvenile court law, the minor is not convicted of the violations which were the subject of the proceeding that resulted in a finding of unfitness and the finding of unfitness was not based solely on either or both the minor's previous delinquent history or a lack of success of previous attempts by the juvenile court to rehabilitate the minor, a new petition or petitions alleging the violation of any law or ordinance defining a crime which would otherwise cause the minor to be a person described in Section 602 committed by the minor prior to or after the finding of unfitness shall be first filed in the juvenile court. This paragraph does not preclude the prosecuting attorney from seeking to find the minor unfit in a subsequent petition.

(b) As to a violation referred to in paragraph (5) or (6) of subdivision (a), if a petition based on those violations has already been filed in the juvenile court, it shall be transferred to the court of criminal jurisdiction without any further proceedings.

(c) The probation officer shall not be required to investigate or submit a report regarding the fitness of a minor for any charge specified in paragraph (5) or (6) of subdivision (a) which is refiled in the juvenile court.

(d) This section shall not be construed to affect the right to appellate review of a finding of unfitness or the duration of the jurisdiction of the juvenile court as specified in Section 607.

SEC. 11. Section 707.1 of the Welfare and Institutions Code is amended to read:

707.1. (a) If the minor is declared not a fit and proper subject to be dealt with under the juvenile court law, the district attorney, or other appropriate prosecuting officer may file an accusatory pleading against the minor in a court of criminal jurisdiction. The case shall proceed from that point according to the laws applicable to a criminal case. If a prosecution has been commenced in another court but has been suspended while juvenile court proceedings are being held, it shall be ordered that the proceedings upon that prosecution shall resume.

(b) (1) The juvenile court may order that a minor alleged to have committed an offense described in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 and who has been declared not a fit and proper subject to be dealt with under the juvenile court law be delivered to the custody of the sheriff upon a finding that the presence of the minor in the juvenile hall would endanger the safety of the public or be detrimental to the other inmates detained in the juvenile hall. Other minors declared not fit and proper subjects to be dealt with under the juvenile court law, if detained, shall remain in the juvenile hall pending final disposition by the criminal court or until they attain the age of 18, whichever occurs first.

(2) Upon attainment of the age of 18 years, such a person who is

detained in juvenile hall shall be delivered to the custody of the sheriff unless the court finds that it is in the best interests of the person and the public that he or she be retained in juvenile hall. If a hearing is requested by the person, the transfer shall not take place until after the court has made its findings.

(3) When a person under 18 years of age is detained pursuant to this section in a facility in which adults are confined the detention shall be in accordance with the conditions specified in subdivision (b) of Section 207.1.

(4) A minor found not a fit and proper subject to be dealt with under the juvenile court law shall, upon the conclusion of the fitness hearing, be entitled to release on bail or on his or her own recognizance on the same circumstances, terms, and conditions as an adult alleged to have committed the same offense.

SEC. 11.5. Section 707.1 of the Welfare and Institutions Code is amended to read:

707.1. (a) If the minor is declared not a fit and proper subject to be dealt with under the juvenile court law, the district attorney, or other appropriate prosecuting officer may file an accusatory pleading against the minor in a court of criminal jurisdiction. The case shall proceed from that point according to the laws applicable to a criminal case. If a prosecution has been commenced in another court but has been suspended while juvenile court proceedings are being held, it shall be ordered that the proceedings upon that prosecution shall resume.

(b) (1) The juvenile court, as to a minor alleged to have committed an offense described in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 and who has been declared not a fit and proper subject to be dealt with under the juvenile court law, or as to a minor for whom charges in a petition or petitions in the juvenile court will be transferred to a court of criminal jurisdiction pursuant to Section 707.01, or as to a minor whose case has been filed directly in or transferred to a court of criminal jurisdiction pursuant to Section 707.01, may order the minor to be delivered to the custody of the sheriff upon a finding that the presence of the minor in the juvenile hall would endanger the safety of the public or be detrimental to the other inmates detained in the juvenile hall. Other minors declared not fit and proper subjects to be dealt with under the juvenile court law, if detained, shall remain in the juvenile hall pending final disposition by the criminal court or until they attain the age of 18, whichever occurs first.

(2) Upon attainment of the age of 18 years such a person who is detained in juvenile hall shall be delivered to the custody of the sheriff unless the court finds that it is in the best interests of the person and the public that he or she be retained in juvenile hall. If a hearing is requested by the person, the transfer shall not take place until after the court has made its findings.

(3) When a person under 18 years of age is detained pursuant to this section in a facility in which adults are confined the detention

shall be in accordance with the conditions specified in subdivision (b) of Section 207.1.

(4) A minor found not a fit and proper subject to be dealt with under the juvenile court law shall, upon the conclusion of the fitness hearing, be entitled to release on bail or on his or her own recognizance on the same circumstances, terms, and conditions as an adult alleged to have committed the same offense.

SEC. 12. Section 727 of the Welfare and Institutions Code is amended to read:

727. (a) When a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 601 or 602 the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment, subject to further order of the court. To facilitate coordination and cooperation among government agencies, the court may, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency that the court determines has failed to meet a legal obligation to provide services to the minor. However, no governmental agency shall be joined as a party in a juvenile court proceeding in which a minor has been ordered committed to the Department of Youth Authority. In any proceeding in which an agency is joined, the court shall not impose duties upon the agency beyond those mandated by law. Nothing in this section shall prohibit agencies which have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the minor.

The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the minor is eligible for those services. With respect to mental health assessment, treatment, and case management services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, the court's determination shall be limited to whether the agency has complied with that chapter.

In the discretion of the court, a ward may be ordered to be on probation without supervision of the probation officer. The court, in so ordering, may impose on the ward any and all reasonable conditions of behavior as may be appropriate under this disposition. A minor who has been adjudged a ward of the court on the basis of the commission of any of the offenses described in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707, Section 459 of the Penal Code, or subdivision (a) of Section 11350 of the Health and Safety Code, shall not be eligible for probation without supervision of the probation officer. A minor who has been adjudged a ward of the court on the basis of the commission of any offense involving the sale or possession for sale of a controlled substance, except misdemeanor offenses involving marijuana, as specified in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, or of an offense in violation of

Section 12220 of the Penal Code, shall be eligible for probation without supervision of the probation officer only when the court determines that the interests of justice would best be served and states reasons on the record for that determination.

In all other cases, the court shall order the care, custody, and control of the minor to be under the supervision of the probation officer who may place the minor in any of the following:

(1) The home of a relative. When a decision has been made to place the minor in the home of a relative, the court may authorize the relative to give legal consent for the minor's medical, surgical, and dental care and education as if the relative caretaker were the custodial parent of the minor.

(2) A suitable licensed community care facility.

(3) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(b) Where the court has ordered a specific minor placed under the supervision of the probation officer and the probation officer has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the minor may be placed in a suitable family home that has filed a license application with the State Department of Social Services, provided that all the following certification conditions are met:

(1) A preplacement home visit is made by the probation officer to determine the suitability of the family home.

(2) The probation officer verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.

(3) The probation officer notifies the licensing agency of the proposed placement and determines that the foster family home applicant has filed specific license application documents prior to and after the placement of the minor. If the license is subsequently denied, the minor shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.

When a minor has been adjudged a ward of the court on the ground that he or she is a person described in Section 601 or 602 and the court finds that notice has been given in accordance with Section 661, and when the court orders that a parent or guardian shall retain custody of that minor either subject to or without the supervision of the probation officer, the parent or guardian may be required to participate with that minor in a counseling or education program including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court.

(c) The juvenile court may direct any and all reasonable orders to the parents and guardians of the minor who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out subdivisions (a) and (b), including orders to appear before a county financial evaluation officer.

When counseling or other treatment services are ordered for the minor, the parent, guardian, or foster parent shall be ordered to participate in those services, unless participation by the parent, guardian, or foster parent is deemed by the court to be inappropriate or potentially detrimental to the child.

SEC. 13. Section 781 of the Welfare and Institutions Code is amended to read:

781. (a) In any case in which a petition has been filed with a juvenile court to commence proceedings to adjudge a person a ward of the court, in any case in which a person is cited to appear before a probation officer or is taken before a probation officer pursuant to Section 626, or in any case in which a minor is taken before any officer of a law enforcement agency, the person or the county probation officer may, five years or more after the jurisdiction of the juvenile court has terminated as to the person, or, in a case in which no petition is filed, five years or more after the person was cited to appear before a probation officer or was taken before a probation officer pursuant to Section 626 or was taken before any officer of a law enforcement agency, or, in any case, at any time after the person has reached the age of 18 years, petition the court for sealing of the records, including records of arrest, relating to the person's case, in the custody of the juvenile court and probation officer and any other agencies, including law enforcement agencies, and public officials as the petitioner alleges, in his or her petition, to have custody of the records. The court shall notify the district attorney of the county and the county probation officer, if he or she is not the petitioner, and the district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition. If, after hearing, the court finds that since the termination of jurisdiction or action pursuant to Section 626, as the case may be, he or she has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order all records, papers, and exhibits in the person's case in the custody of the juvenile court sealed, including the juvenile court record, minute book entries, and entries on dockets, and other records relating to the case in the custody of the other agencies and officials as are named in the order. In any case in which a ward of the juvenile court is subject to the registration requirements set forth in Section 290 of the Penal Code, a court, in ordering the sealing of the juvenile records of the person, also shall provide in the order that the person is relieved from the registration requirement and for the destruction of all registration information in the custody of the Department of Justice and other agencies and officials. Notwithstanding any other provision of law, the court shall not order the person's records sealed in any case in which the person has been found by the juvenile court to have committed an offense listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 until at least six years have elapsed since commission of the offense listed in

subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707. Once the court has ordered the person's records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, the records of which are ordered sealed. The court shall send a copy of the order to each agency and official named therein, directing the agency to seal its records and stating the date thereafter to destroy the sealed records. Each such agency and official shall seal the records in its custody as directed by the order, shall advise the court of its compliance, and thereupon shall seal the copy of the court's order for sealing of records that it, he, or she received. The person who is the subject of records sealed pursuant to this section may petition the superior court to permit inspection of the records by persons named in the petition, and the superior court may so order. Otherwise, except as provided in subdivision (b), the records shall not be open to inspection.

(b) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

(c) (1) Subdivision (a) does not apply to Department of Motor Vehicle records of any convictions for offenses under the Vehicle Code or any local ordinance relating to the operation, stopping and standing, or parking of a vehicle where the record of any such conviction would be a public record under Section 1808 of the Vehicle Code. However, if a court orders a case record containing any such conviction to be sealed under this section, and if the Department of Motor Vehicles maintains a public record of such a conviction, the court shall notify the Department of Motor Vehicles of the sealing and the department shall advise the court of its receipt of the notice.

Notwithstanding any other provision of law, subsequent to the notification, the Department of Motor Vehicles shall allow access to its record of convictions only to the subject of the record and to insurers which have been granted requester code numbers by the department. Any insurer to which such a record of conviction is disclosed, when such a conviction record has otherwise been sealed under this section, shall be given notice of the sealing when the record is disclosed to the insurer. The insurer may use the information contained in the record for purposes of determining eligibility for insurance and insurance rates for the subject of the record, and the information shall not be used for any other purpose nor shall it be disclosed by an insurer to any person or party not having access to the record.

(2) This subdivision shall not be construed as preventing the

sealing of any record which is maintained by any agency or party other than the Department of Motor Vehicles.

(3) This subdivision shall not be construed as affecting the procedures or authority of the Department of Motor Vehicles for purging department records.

(d) Unless for good cause the court determines that the juvenile court record shall be retained, the court shall order the destruction of a person's juvenile court records that are sealed pursuant to this section as follows: five years after the record was ordered sealed, if the person who is the subject of the record was alleged or adjudged to be a person described by Section 601; or when the person who is the subject of the record reaches the age of 38 if the person was alleged or adjudged to be a person described by Section 602. Any other agency in possession of sealed records may destroy its records five years after the record was ordered sealed.

SEC. 13.1. Section 781 of the Welfare and Institutions Code is amended to read:

781. (a) In any case in which a petition has been filed with a juvenile court to commence proceedings to adjudge a person a ward of the court, in any case in which a person is cited to appear before a probation officer or is taken before a probation officer pursuant to Section 626, or in any case in which a minor is taken before any officer of a law enforcement agency, the person or the county probation officer may, five years or more after the jurisdiction of the juvenile court has terminated as to the person, or, in a case in which no petition is filed, five years or more after the person was cited to appear before a probation officer or was taken before a probation officer pursuant to Section 626 or was taken before any officer of a law enforcement agency, or, in any case, at any time after the person has reached the age of 18 years, petition the court for sealing of the records, including records of arrest, relating to the person's case, in the custody of the juvenile court and probation officer and any other agencies, including law enforcement agencies, and public officials as the petitioner alleges, in his or her petition, to have custody of the records. The court shall notify the district attorney of the county and the county probation officer, if he or she is not the petitioner, and the district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition. If, after hearing, the court finds that since the termination of jurisdiction or action pursuant to Section 626, as the case may be, he or she has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order all records, papers, and exhibits in the person's case in the custody of the juvenile court sealed, including the juvenile court record, minute book entries, and entries on dockets, and other records relating to the case in the custody of the other agencies and officials as are named in the order. In any case in which a ward of the juvenile court is subject to the registration requirements set forth in Section 290 of the Penal

Code, a court, in ordering the sealing of the juvenile records of the person, also shall provide in the order that the person is relieved from the registration requirement and for the destruction of all registration information in the custody of the Department of Justice and other agencies and officials. Notwithstanding any other provision of law, the court shall not order the person's records sealed in any case in which the person has been found by the juvenile court to have committed an offense listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 until at least six years have elapsed since commission of the offense listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707. Once the court has ordered the person's records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, the records of which are ordered sealed. The court shall send a copy of the order to each agency and official named therein, directing the agency to seal its records and stating the date thereafter to destroy the sealed records. Each such agency and official shall seal the records in its custody as directed by the order, shall advise the court of its compliance, and thereupon shall seal the copy of the court's order for sealing of records that it, he, or she received. The person who is the subject of records sealed pursuant to this section may petition the superior court to permit inspection of the records by persons named in the petition, and the superior court may so order. Otherwise, except as provided in subdivision (b), the records shall not be open to inspection.

(b) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

(c) (1) Subdivision (a) does not apply to Department of Motor Vehicle records of any convictions for offenses under the Vehicle Code or any local ordinance relating to the operation, stopping and standing, or parking of a vehicle where the record of any such conviction would be a public record under Section 1808 of the Vehicle Code. However, if a court orders a case record containing any such conviction to be sealed under this section, and if the Department of Motor Vehicles maintains a public record of such a conviction, the court shall notify the Department of Motor Vehicles of the sealing and the department shall advise the court of its receipt of the notice.

Notwithstanding any other provision of law, subsequent to the notification, the Department of Motor Vehicles shall allow access to its record of convictions only to the subject of the record and to insurers which have been granted requester code numbers by the

department. Any insurer to which such a record of conviction is disclosed, when such a conviction record has otherwise been sealed under this section, shall be given notice of the sealing when the record is disclosed to the insurer. The insurer may use the information contained in the record for purposes of determining eligibility for insurance and insurance rates for the subject of the record, and the information shall not be used for any other purpose nor shall it be disclosed by an insurer to any person or party not having access to the record.

(2) This subdivision shall not be construed as preventing the sealing of any record which is maintained by any agency or party other than the Department of Motor Vehicles.

(3) This subdivision shall not be construed as affecting the procedures or authority of the Department of Motor Vehicles for purging department records.

(d) Unless for good cause the court determines that the juvenile court record shall be retained, the court shall order the destruction of a person's juvenile court records that are sealed pursuant to this section as follows: five years after the record was ordered sealed, if the person who is the subject of the record was alleged or adjudged to be a person described by Section 601; or when the person who is the subject of the record reaches the age of 38 if the person was alleged or adjudged to be a person described by Section 602. Any other agency in possession of sealed records may destroy its records five years after the record was ordered sealed.

(e) This section shall not permit the sealing of a person's juvenile court records for an offense where the person is convicted of that offense in a criminal court pursuant to the provisions of Section 707.1. This subdivision is declaratory of existing law.

SEC. 13.5. Section 781 of the Welfare and Institutions Code is amended to read:

781. (a) In any case in which a petition has been filed with a juvenile court to commence proceedings to adjudge a person a ward of the court, in any case in which a person is cited to appear before a probation officer or is taken before a probation officer pursuant to Section 626, or in any case in which a minor is taken before any officer of a law enforcement agency, the person or the county probation officer may, five years or more after the jurisdiction of the juvenile court has terminated as to the person, or, in a case in which no petition is filed, five years or more after the person was cited to appear before a probation officer or was taken before a probation officer pursuant to Section 626 or was taken before any officer of a law enforcement agency, or, in any case, at any time after the person has reached the age of 18 years, petition the court for sealing of the records, including records of arrest, relating to the person's case, in the custody of the juvenile court and probation officer and any other agencies, including law enforcement agencies, and public officials as the petitioner alleges, in his or her petition, to have custody of the records. The court shall notify the district attorney of the county and

the county probation officer, if he or she is not the petitioner, and the district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition. If, after hearing, the court finds that since the termination of jurisdiction or action pursuant to Section 626, as the case may be, he or she has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order all records, papers, and exhibits in the person's case in the custody of the juvenile court sealed, including the juvenile court record, minute book entries, and entries on dockets, and other records relating to the case in the custody of the other agencies and officials as are named in the order. In any case in which a ward of the juvenile court is subject to the registration requirements set forth in Section 290 of the Penal Code, a court, in ordering the sealing of the juvenile records of the person, also shall provide in the order that the person is relieved from the registration requirement and for the destruction of all registration information in the custody of the Department of Justice and other agencies and officials. Notwithstanding any other provision of law, the court shall not order the person's records sealed in any case in which the person has been found by the juvenile court to have committed an offense listed in subdivision (b) of Section 707 until at least six years have elapsed since commission of the offense listed in subdivision (b) of Section 707. Once the court has ordered the person's records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, the records of which are ordered sealed. The court shall send a copy of the order to each agency and official named therein, directing the agency to seal its records and stating the date thereafter to destroy the sealed records. Each such agency and official shall seal the records in its custody as directed by the order, shall advise the court of its compliance, and thereupon shall seal the copy of the court's order for sealing of records that it, he, or she received. The person who is the subject of records sealed pursuant to this section may petition the superior court to permit inspection of the records by persons named in the petition, and the superior court may so order. Otherwise, except as provided in subdivision (b), the records shall not be open to inspection.

(b) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

(c) (1) Subdivision (a) does not apply to Department of Motor Vehicle records of any convictions for offenses under the Vehicle

Code or any local ordinance relating to the operation, stopping and standing, or parking of a vehicle where the record of any such conviction would be a public record under Section 1808 of the Vehicle Code. However, if a court orders a case record containing any such conviction to be sealed under this section, and if the Department of Motor Vehicles maintains a public record of such a conviction, the court shall notify the Department of Motor Vehicles of the sealing and the department shall advise the court of its receipt of the notice.

Notwithstanding any other provision of law, subsequent to the notification, the Department of Motor Vehicles shall allow access to its record of convictions only to the subject of the record and to insurers which have been granted requester code numbers by the department. Any insurer to which such a record of conviction is disclosed, when such a conviction record has otherwise been sealed under this section, shall be given notice of the sealing when the record is disclosed to the insurer. The insurer may use the information contained in the record for purposes of determining eligibility for insurance and insurance rates for the subject of the record, and the information shall not be used for any other purpose nor shall it be disclosed by an insurer to any person or party not having access to the record.

(2) This subdivision shall not be construed as preventing the sealing of any record which is maintained by any agency or party other than the Department of Motor Vehicles.

(3) This subdivision shall not be construed as affecting the procedures or authority of the Department of Motor Vehicles for purging department records.

(d) Unless for good cause the court determines that the juvenile court record shall be retained, the court shall order the destruction of a person's juvenile court records that are sealed pursuant to this section as follows: five years after the record was ordered sealed, if the person who is the subject of the record was alleged or adjudged to be a person described by Section 601; or when the person who is the subject of the record reaches the age of 38 if the person was alleged or adjudged to be a person described by Section 602. Any other agency in possession of sealed records may destroy its records five years after the record was ordered sealed.

SEC. 13.6. Section 781 of the Welfare and Institutions Code is amended to read:

781. (a) In any case in which a petition has been filed with a juvenile court to commence proceedings to adjudge a person a ward of the court, in any case in which a person is cited to appear before a probation officer or is taken before a probation officer pursuant to Section 626, or in any case in which a minor is taken before any officer of a law enforcement agency, the person or the county probation officer may, five years or more after the jurisdiction of the juvenile court has terminated as to the person, or, in a case in which no petition is filed, five years or more after the person was cited to

appear before a probation officer or was taken before a probation officer pursuant to Section 626 or was taken before any officer of a law enforcement agency, or, in any case, at any time after the person has reached the age of 18 years, petition the court for sealing of the records, including records of arrest, relating to the person's case, in the custody of the juvenile court and probation officer and any other agencies, including law enforcement agencies, and public officials as the petitioner alleges, in his or her petition, to have custody of the records. The court shall notify the district attorney of the county and the county probation officer, if he or she is not the petitioner, and the district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition. If, after hearing, the court finds that since the termination of jurisdiction or action pursuant to Section 626, as the case may be, he or she has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order all records, papers, and exhibits in the person's case in the custody of the juvenile court sealed, including the juvenile court record, minute book entries, and entries on dockets, and other records relating to the case in the custody of the other agencies and officials as are named in the order. In any case in which a ward of the juvenile court is subject to the registration requirements set forth in Section 290 of the Penal Code, a court, in ordering the sealing of the juvenile records of the person, also shall provide in the order that the person is relieved from the registration requirement and for the destruction of all registration information in the custody of the Department of Justice and other agencies and officials. Notwithstanding any other provision of law, the court shall not order the person's records sealed in any case in which the person has been found by the juvenile court to have committed an offense listed in subdivision (b) of Section 707 until at least six years have elapsed since commission of the offense listed in subdivision (b) of Section 707. Once the court has ordered the person's records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, the records of which are ordered sealed. The court shall send a copy of the order to each agency and official named therein, directing the agency to seal its records and stating the date thereafter to destroy the sealed records. Each such agency and official shall seal the records in its custody as directed by the order, shall advise the court of its compliance, and thereupon shall seal the copy of the court's order for sealing of records that it, he, or she received. The person who is the subject of records sealed pursuant to this section may petition the superior court to permit inspection of the records by persons named in the petition, and the superior court may so order. Otherwise, except as provided in subdivision (b), the records shall not be open to inspection.

(b) In any action or proceeding based upon defamation, a court,

upon a showing of good cause, may order any records sealed under this section to be opened and admitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

(c) (1) Subdivision (a) does not apply to Department of Motor Vehicle records of any convictions for offenses under the Vehicle Code or any local ordinance relating to the operation, stopping and standing, or parking of a vehicle where the record of any such conviction would be a public record under Section 1808 of the Vehicle Code. However, if a court orders a case record containing any such conviction to be sealed under this section, and if the Department of Motor Vehicles maintains a public record of such a conviction, the court shall notify the Department of Motor Vehicles of the sealing and the department shall advise the court of its receipt of the notice.

Notwithstanding any other provision of law, subsequent to the notification, the Department of Motor Vehicles shall allow access to its record of convictions only to the subject of the record and to insurers which have been granted requester code numbers by the department. Any insurer to which such a record of conviction is disclosed, when such a conviction record has otherwise been sealed under this section, shall be given notice of the sealing when the record is disclosed to the insurer. The insurer may use the information contained in the record for purposes of determining eligibility for insurance and insurance rates for the subject of the record, and the information shall not be used for any other purpose nor shall it be disclosed by an insurer to any person or party not having access to the record.

(2) This subdivision shall not be construed as preventing the sealing of any record which is maintained by any agency or party other than the Department of Motor Vehicles.

(3) This subdivision shall not be construed as affecting the procedures or authority of the Department of Motor Vehicles for purging department records.

(d) Unless for good cause the court determines that the juvenile court record shall be retained, the court shall order the destruction of a person's juvenile court records that are sealed pursuant to this section as follows: five years after the record was ordered sealed, if the person who is the subject of the record was alleged or adjudged to be a person described by Section 601; or when the person who is the subject of the record reaches the age of 38 if the person was alleged or adjudged to be a person described by Section 602. Any other agency in possession of sealed records may destroy its records five years after the record was ordered sealed.

(e) This section shall not permit the sealing of a person's juvenile court records for an offense where the person is convicted of that

offense in a criminal court pursuant to the provisions of Section 707.1. This subdivision is declaratory of existing law.

SEC. 14. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) Except as provided in Section 828, a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in any such case or made available to the probation officer in making his or her report, or to the judge, referee or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer, may be inspected only by court personnel, the district attorney, a city attorney or city prosecutor authorized to prosecute criminal or juvenile cases under state law, the minor who is the subject of the proceeding, his or her parents or guardian, the attorneys for the parties, and any other person who may be designated by court order of the judge of the juvenile court upon filing a petition therefor. Child protective agencies, as defined in Section 11165.9 of the Penal Code, also shall be entitled to inspect these documents upon the filing of a declaration under penalty of perjury stating that access to these documents is necessary and relevant in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

Any records or reports relating to a matter within the jurisdiction of the juvenile court prepared by or released by the court, a probation department, or the county department of social services, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, any of those records or reports, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be made attachments to any other documents without the prior approval of the presiding judge of the juvenile court, unless they are used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality in cases involving serious acts of violence. Further, it is the intent of the Legislature that even in these selected cases dissemination of juvenile court records be as limited as possible, consistent with the need to work with a pupil in an appropriate fashion, and the need to protect potentially vulnerable school staff and other pupils over whom school staff exercise direct supervision and responsibility.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school in kindergarten or any of grades 1 to 12, inclusive, has been found by a court of competent jurisdiction to have

used, sold, or possessed narcotics or a controlled substance or to have committed any crime listed in paragraphs (1) to (15), inclusive, paragraphs (17) to (19), inclusive, or paragraphs (25) to (29), inclusive, of subdivision (b) of, or in paragraph (2) of subdivision (d) of, or in subdivision (e) of, Section 707 shall be provided by the court, within seven days, to the superintendent of the school district of attendance. This information shall be expeditiously transmitted to any teacher, counselor, or administrator with direct supervisorial or disciplinary responsibility over the minor who the superintendent or his or her designee, after consultation with the principal at the school of attendance, believes needs this information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability. Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher, counselor, or administrator. An intentional violation of the confidentiality provisions of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Destroy This Record 12 Months After The Minor Returns To Public School. Unlawful Dissemination of This Information Is A Misdemeanor." No information transmitted by the superintendent pursuant to subdivision (b) shall be transmitted by the superintendent or by any teacher, counselor, or administrator to any other person more than 12 months after receipt of the original notice from the court or more than 12 months after the minor returns to public school, whichever occurs last. Any information received from the court shall be destroyed by school authorities 12 months after its receipt from the court or 12 months after the minor returns to public school, whichever occurs last. At any time after the date by which a record required to be destroyed

by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred and shall specify the date by which the record will be destroyed.

(e) Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

SEC. 14.5. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) Except as provided in Section 828, a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in any such case or made available to the probation officer in making his or her report, or to the judge, referee or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer, may be inspected only by court personnel, the district attorney, a city attorney or city prosecutor authorized to prosecute criminal or juvenile cases under state law, the minor who is the subject of the proceeding, his or her parents or guardian, the attorneys for the parties, and any other person who may be designated by court order of the judge of the juvenile court upon filing a petition therefor. Child protective agencies, as defined in Section 11165.9 of the Penal Code, also shall be entitled to inspect these documents upon the filing of a declaration under penalty of perjury stating that access to these documents is necessary and relevant in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

Any records or reports relating to a matter within the jurisdiction of the juvenile court prepared by or released by the court, a probation department, or the county department of social services, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, any of those records or reports, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be made attachments to any other documents without the prior approval of the presiding judge of the juvenile court, unless they are used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile

court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality in cases involving serious acts of violence. Further, it is the intent of the Legislature that even in these selected cases dissemination of juvenile court records be as limited as possible, consistent with the need to work with a pupil in an appropriate fashion, and the need to protect potentially vulnerable school staff and other pupils over whom school staff exercise direct supervision and responsibility.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school in kindergarten or any of grades 1 to 12, inclusive, has been found by a court of competent jurisdiction to have used, sold, or possessed narcotics or a controlled substance or to have committed any crime listed in paragraphs (1) to (15), inclusive, (17) to (19), inclusive, or (25) to (29), inclusive, of subdivision (b) of Section 707 shall be provided by the court, within seven days, to the superintendent of the school district of attendance. This information shall be expeditiously transmitted to any teacher, counselor, or administrator with direct supervisorial or disciplinary responsibility over the minor who the superintendent or his or her designee, after consultation with the principal at the school of attendance, believes needs this information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability. Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher, counselor, or administrator. An intentional violation of the confidentiality provisions of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Destroy This Record 12 Months

After The Minor Returns To Public School. Unlawful Dissemination of This Information Is A Misdemeanor." No information transmitted by the superintendent pursuant to subdivision (b) shall be transmitted by the superintendent or by any teacher, counselor, or administrator to any other person more than 12 months after receipt of the original notice from the court or more than 12 months after the minor returns to public school, whichever occurs last. Any information received from the court shall be destroyed by school authorities 12 months after its receipt from the court or 12 months after the minor returns to public school, whichever occurs last. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred and shall specify the date by which the record will be destroyed.

(e) Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

SEC. 15. Section 828.1 of the Welfare and Institutions Code is amended to read:

828.1. (a) While the Legislature reaffirms its belief that juvenile criminal records, in general, should be confidential, it is the intent of the Legislature in enacting this section to provide for a limited exception to that confidentiality in cases involving serious acts of violence. Further, it is the intent of the Legislature that even in these selected cases the dissemination of juvenile criminal records be as limited as possible, consistent with the need to work with a student in an appropriate fashion, and the need to protect potentially vulnerable school staff and other students over whom the school staff exercises direct supervision and responsibility.

(b) Notwithstanding subdivision (a) of Section 828, a school district police or security department may provide written notice to the superintendent of the school district that a minor enrolled in a public school maintained by that school district, in kindergarten or any of grades 1 to 12, inclusive, has been found by a court of competent jurisdiction to have illegally used, sold, or possessed a controlled substance as defined in Section 11007 of the Health and Safety Code or to have committed any crime listed in paragraphs (1) to (15), inclusive, or paragraphs (17) to (19), inclusive, or paragraphs (25) to (29), inclusive, of subdivision (b) of, or in paragraph (2) of subdivision (d) of, or subdivision (e) of, Section 707. The information may be expeditiously transmitted to any teacher, counselor, or

administrator with direct supervisorial or disciplinary responsibility over the minor, who the superintendent or his or her designee, after consultation with the principal at the school of attendance, believes needs this information to work with the student in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

(c) Any information received by a teacher, counselor, or administrator pursuant to this section shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher, counselor, or administrator. An intentional violation of the confidentiality provisions of this section is a misdemeanor, punishable by a fine not to exceed five hundred dollars ($500).

SEC. 15.5. Section 828.1 of the Welfare and Institutions Code is amended to read:

828.1. (a) While the Legislature reaffirms its belief that juvenile criminal records, in general, should be confidential, it is the intent of the Legislature in enacting this section to provide for a limited exception to that confidentiality in cases involving serious acts of violence. Further, it is the intent of the Legislature that even in these selected cases the dissemination of juvenile criminal records be as limited as possible, consistent with the need to work with a student in an appropriate fashion, and the need to protect potentially vulnerable school staff and other students over whom the school staff exercises direct supervision and responsibility.

(b) Notwithstanding subdivision (a) of Section 828, a school district police or security department may provide written notice to the superintendent of the school district that a minor enrolled in a public school maintained by that school district, in kindergarten or any of grades 1 to 12, inclusive, has been found by a court of competent jurisdiction to have illegally used, sold, or possessed a controlled substance as defined in Section 11007 of the Health and Safety Code or to have committed any crime listed in paragraphs (1) to (15), inclusive, (17) to (19), inclusive, or (25) to (29), inclusive, of subdivision (b) of Section 707. The information may be expeditiously transmitted to any teacher, counselor, or administrator with direct supervisorial or disciplinary responsibility over the minor, who the superintendent or his or her designee, after consultation with the principal at the school of attendance, believes needs this information to work with the student in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

(c) Any information received by a teacher, counselor, or administrator pursuant to this section shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher, counselor, or administrator. An intentional violation of the confidentiality provisions of this section is a misdemeanor, punishable by a fine not to exceed five hundred dollars ($500).

SEC. 16. Section 1731.5 of the Welfare and Institutions Code is amended to read:

1731.5. (a) After certification to the Governor as provided in this article, a court may commit to the authority any person convicted of a public offense who comes within paragraphs (1), (2), and (3), or paragraphs (1), (2), and (4), below:

(1) Is found to be less than 21 years of age at the time of apprehension.

(2) Is not sentenced to death, imprisonment for life, with or without the possibility of parole, whether or not pursuant to Section 190 of the Penal Code, imprisonment for 90 days or less, or the payment of a fine, or after having been directed to pay a fine, defaults in the payment thereof, and is subject to imprisonment for more than 90 days under the judgment.

(3) Is not granted probation.

(4) Was granted probation and probation is revoked and terminated.

(b) The Youth Authority shall accept a person committed to it pursuant to this article if it believes that the person can be materially benefited by its reformatory and educational discipline, and if it has adequate facilities to provide that care.

(c) Any person under the age of 21 years who is not committed to the authority pursuant to this section may be transferred to the authority by the Director of Corrections with the approval of the Director of the Youth Authority. In sentencing a person under the age of 21 years, the court may order that the person shall be transferred to the custody of the Youth Authority pursuant to this subdivision. When the court makes this order and the Youth Authority fails to accept custody of the person, the person shall be returned to court for resentencing. The transfer shall be solely for the purposes of housing the inmate, allowing participation in the programs available at the institution by the inmate, and allowing Youth Authority parole supervision of the inmate, who, in all other aspects shall be deemed to be committed to the Department of Corrections and shall remain subject to the jurisdiction of the Director of Corrections and the Board of Prison Terms. Notwithstanding subdivision (b) of Section 2900 of the Penal Code, the Director of the Department of Corrections, with the concurrence of the Director of the Youth Authority, may designate a facility under the jurisdiction of the Director of the Youth Authority as a place of reception for any person described in this subdivision.

The Director of the Youth Authority shall have the same powers with respect to an inmate transferred pursuant to this subdivision as if the inmate had been committed or transferred to the Youth Authority either under the Arnold-Kennick Juvenile Court Law or subdivision (a).

The duration of the transfer shall extend until the Director of the Youth Authority orders the inmate returned to the Department of

Corrections, the inmate is ordered discharged by the Board of Prison Terms, or the inmate reaches the age of 25 years, whichever first occurs.

SEC. 17. Section 1753.3 of the Welfare and Institutions Code is amended to read:

1753.3. (a) The Director of the Youth Authority may enter into an agreement with a city, county, or city and county, to permit transfer of wards in the custody of the Director of the Youth Authority to an appropriate facility of the city, county, or city and county, if the official having jurisdiction over the facility has consented. The agreement shall provide for contributions to the city, county, or city and county toward payment of costs incurred with reference to the transferred wards.

(b) When an agreement entered into pursuant to subdivision (a) is in effect with respect to a particular local facility, the Director of the Youth Authority may transfer wards and parole violators to the facility.

(c) Notwithstanding subdivision (b), the Director of the Youth Authority may deny placement in a local facility to a parole violator who was committed to the Youth Authority for the commission of any offense set forth in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707.

(d) Wards transferred to those facilities are subject to the rules and regulations of the facility in which they are confined, but remain under the legal custody of the Department of the Youth Authority.

SEC. 18. Section 1767.1 of the Welfare and Institutions Code is amended to read:

1767.1. At least 30 days before the Youthful Offender Parole Board meets to review or consider the parole of any person who has been committed to the control of the Department of the Youth Authority for the commission of any offense described in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707, or for the commission of an offense in violation of paragraph (3) of subdivision (a) of Section 261 of the Penal Code, the board shall send written notice of the hearing to each of the following persons: the judge of the court which committed the person to the authority, the attorney for the person, the district attorney of the county from which the person was committed, and the law enforcement agency that investigated the case.

Each of the persons so notified shall have the right to submit a written statement to the board at least 10 days prior to the scheduled hearing for the board's consideration at the hearing. Nothing in this subdivision shall be construed to permit any person so notified to attend the hearing. With respect to the parole of any person over the age of 18 years, the presiding officer shall state findings and supporting reasons for the decision of the board at the hearing. The findings and reasons shall be reduced to writing, and shall be made available for inspection by members of the public no later than 30 days from the date of the hearing.

SEC. 19. Section 1769 of the Welfare and Institutions Code is amended to read:

1769. (a) Every person committed to the Department of the Youth Authority by a juvenile court shall, except as provided in subdivision (b), be discharged upon the expiration of a two-year period of control or when the person reaches his or her 21st birthday, whichever occurs later, unless an order for further detention has been made by the committing court pursuant to Article 6 (commencing with Section 1800).

(b) Every person committed to the Department of the Youth Authority by a juvenile court who has been found to be a person described in Section 602 by reason of the violation of any of the offenses listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707, shall be discharged upon the expiration of a two-year period of control or when the person reaches his or her 25th birthday, whichever occurs later, unless an order for further detention has been made by the committing court pursuant to Article 6 (commencing with Section 1800).

SEC. 20. Section 1772 of the Welfare and Institutions Code is amended to read:

1772. (a) Subject to subdivision (b), every person honorably discharged from control by the Youthful Offender Parole Board who has not, during the period of control by the authority, been placed by the authority in a state prison shall thereafter be released from all penalties and disabilities resulting from the offense or crime for which he or she was committed, and every person discharged may petition the court which committed him or her, and the court may upon such a petition set aside the verdict of guilty and dismiss the accusation or information against the petitioner who shall thereafter be released from all penalties and disabilities resulting from the offense or crime for which he or she was committed, including, but not limited to, any disqualification for any employment or occupational license, or both, created by any other provision of law.

(b) Notwithstanding subdivision (a):

(1) A person described by subdivision (a) shall not be eligible for appointment as a peace officer employed by any public agency if his or her appointment would otherwise be prohibited by Section 1029 of the Government Code. However, such a person may be appointed and employed as a peace officer by the Department of the Youth Authority if (A) at least five years have passed since his or her honorable discharge, and the person has had no misdemeanor or felony convictions except for traffic misdemeanors since he or she was honorably discharged by the Youthful Offender Parole Board, or (B) the person was employed as a peace officer by the Department of the Youth Authority on or before January 1, 1983. No person who is under the jurisdiction of the Department of the Youth Authority shall be admitted to an examination for a peace officer position with the department unless and until the person has been honorably discharged from the jurisdiction of the department by the Youthful

Offender Parole Board.

(2) A person described by subdivision (a) is subject to Sections 12021 and 12021.1 of the Penal Code.

(3) The conviction of a person described by subdivision (a) for an offense listed in subdivision (b) of Section 707 is admissible in a subsequent criminal, juvenile, or civil proceeding if otherwise admissible, if all the following are true:

(A) The person was 16 years of age or older at the time he or she committed the offense.

(B) The person was found unfit to be dealt with under the juvenile court law pursuant to Section 707 because he or she was alleged to have committed an offense listed in subdivision (b) of Section 707.

(C) The person was tried as an adult and convicted of an offense listed in subdivision (b) of Section 707.

(D) The person was committed to the Department of the Youth Authority for the offense referred to in subparagraph (C).

(4) The conviction of a person described by subdivision (a) may be used to enhance the punishment for a subsequent offense.

(5) The conviction of a person who is 18 years of age or older at the time he or she committed the offense is admissible in a subsequent civil, criminal, or juvenile proceeding, if otherwise admissible pursuant to law.

(c) Every person discharged from control by the Youthful Offender Parole Board shall be informed of the provisions of this section in writing at the time of discharge.

(d) "Honorably discharged" as used in this section means and includes every person whose discharge is based upon a good record on parole.

SEC. 21. Sections 1, 2, 2.7, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 17, 18, and 19 of this act shall become operative only if Assembly Bill 2428 and Senate Bill 1539 of the 1993–94 Regular Session of the Legislature and Senate Bill 23 of the 1993–94 First Extraordinary Session of the Legislature are enacted and Senate Concurrent Resolution 38 of the 1993–94 Regular Session of the Legislature is adopted by the Legislature.

SEC. 22. Sections 10, 13.5, 14.5, and 15.5 of this act shall become operative only if Assembly Bill 2428 and Senate Bill 1539 of the 1993–94 Regular Session of the Legislature and Senate Bill 23 of the 1993–94 First Extraordinary Session of the Legislature are not enacted and Senate Concurrent Resolution 38 of the 1993–94 Regular Session of the Legislature is not adopted by the Legislature.

SEC. 23. Section 10.8 of this act shall become operative only if AB 1948 of the 1993–94 Regular Session of the Legislature is enacted and this bill is chaptered after AB 1948. In that event Section 707.01 as proposed to be added to the Welfare and Institutions Code by AB 1948 shall not become operative.

SEC. 24. Sections 1.5 and 2.5 of this bill incorporate amendments to Section 207.1 of the Welfare and Institutions Code proposed by

both this bill and AB 1948. They shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 207.1 of the Welfare and Institutions Code, (3) the conditions specified in Section 21 of this bill are satisfied, and (4) this bill is enacted after AB 1948, in which case Sections 1 and 2 of this bill shall not become operative.

SEC. 25. Sections 5.5 and 6.5 of this bill incorporate amendments to Section 653.5 of the Welfare and Institutions Code proposed by both this bill and AB 1180. They shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 653.5 of the Welfare and Institutions Code, (3) the conditions specified in Section 21 of this bill are satisfied, and (4) this bill is enacted after AB 1180, in which case Sections 5 and 6 of this bill shall not become operative.

SEC. 26. Section 9.5 of this bill incorporates amendments to Section 707 of the Welfare and Institutions Code proposed by both this bill and AB 1948. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 707 of the Welfare and Institutions Code, (3) the conditions specified in Section 21 of this bill are satisfied, and (4) this bill is enacted after AB 1948, in which case Section 9 of this bill shall not become operative.

SEC. 27. Section 10.5 of this bill incorporates amendments to Section 707 of the Welfare and Institutions Code proposed by both this bill and AB 1948. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 707 of the Welfare and Institutions Code, (3) the conditions specified in Section 22 of this bill are satisfied, and (4) this bill is enacted after AB 1948, in which case Section 10 of this bill shall not become operative.

SEC. 28. Section 11.5 of this bill incorporates amendments to Section 707.1 of the Welfare and Institutions Code proposed by both this bill and AB 1948. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 707.1 of the Welfare and Institutions Code, (3) the conditions specified in Section 21 of this bill are satisfied, and (4) this bill is enacted after AB 1948, in which case Section 11 of this bill shall not become operative.

SEC. 29. Section 13.1 of this bill incorporates amendments to Section 781 of the Welfare and Institutions Code proposed by both this bill and AB 234. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 781 of the Welfare and Institutions Code, (3) the conditions specified in Section 21 of this bill are satisfied, and (4) this bill is enacted after AB 234, in which case Section 13 of this bill shall not become operative.

SEC. 30. Section 13.6 of this bill incorporates amendments to Section 781 of the Welfare and Institutions Code proposed by both this bill and AB 234. It shall only become operative if (1) both bills

are enacted and become effective on January 1, 1995, (2) each bill amends Section 781 of the Welfare and Institutions Code, (3) the conditions specified in Section 22 of this bill are satisfied, and (4) this bill is enacted after AB 234, in which case Section 13.5 of this bill shall not become operative.

SEC. 31. If both this bill and AB 3053 or AB 3309 are enacted, or all three bills are enacted, and become effective on January 1, 1995, and this bill is chaptered last, Sections 14 and 14.5 of this bill shall not become operative, and Section 827 of the Welfare and Institutions Code, as amended by AB 3053 or AB 3309, whichever becomes operative pursuant to law, shall be operative.

SEC. 32. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 454

An act to add and repeal Title 5.3 (commencing with Section 13750) of Part 4 of the Penal Code, relating to juveniles.

[Approved by Governor September 9, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Title 5.3 (commencing with Section 13750) is added to Part 4 of the Penal Code, to read:

TITLE 5.3. TASK FORCE TO REVIEW ALL ASPECTS OF THE JUVENILE JUSTICE SYSTEM

13750. The Legislature finds and declares all of the following:

(a) There is an urgent need for a comprehensive examination and reform of the juvenile justice system in California by a task force of

practitioners that will be known as the California Task Force to Review Juvenile Crime and the Juvenile Justice Response. The purpose of this task force is to improve prevention, intervention, and rehabilitation services for juvenile offenders.

(b) Since 1961, when the last major revision of California's juvenile codes occurred, society has changed dramatically. Delinquent offenders who are described in Section 602 of the Welfare and Institutions Code are involved at younger ages in more serious, gang-related, and violent offenses than in past years. They are in need of immediate and coordinated intervention to prevent their progress toward adult criminality. Status offenders who are described in Section 601 of the Welfare and Institutions Code are multiproblem children who do not attend school, run away from home, or are out of the control of parents and school authorities. These children are in need of early intervention to prevent delinquency, drug and alcohol involvement, school dropout, and their own further injury and victimization.

(c) The current juvenile statutes, procedures, and programs that attempt to address the behavior of these offenders have proven to be ineffective and frustrating to implement. There is a compelling need for coordinated, early assessment, interagency case management, and improved resource management for these minors and their families at the state and local levels. Due to shrinking funds at all levels, these offenders are not being adequately assessed, supervised, served, or controlled. Also, the public is at increased risk of harm.

13751. There is in state government the California Task Force to Review Juvenile Crime and the Juvenile Justice Response for all of the following purposes, including, but not limited to:

(a) Analyzing all aspects of juvenile law, and making suggestions whether reform is needed in areas including, but not limited to, whether the time the Department of the Youth Authority can maintain jurisdiction over a juvenile should be extended, whether the juvenile fitness age should be changed, whether offenses should be added or deleted to the fitness list, whether there should be a prohibition on the sealing of juvenile records, whether there should be varying degrees of confidentiality for juvenile records, whether juvenile records should be used for purposes of adult sentencing or parole decisions, whether procedures need to be enacted for dealing with the fitness of juveniles who have previously been found unfit, but subsequently acquitted, and curfew laws.

(b) Considering whether new sentencing options should be added, whether state youth sentencing policy should be changed, whether county pilot projects should be encouraged, whether barriers need to be relaxed for startup of community-based alternatives, and whether the current cost-reimbursement structure needs to be examined.

(c) Examining application of the detention power as it applies to low- and high-risk youth and suggesting criteria, including

alternatives to detention.

(d) Finding creative and constructive solutions to California's juvenile justice problems by suggesting new juvenile justice models and techniques for troubled youth in California.

(e) Exploring county placement options and making recommendations whether nonresidential or residential community-based alternatives should be offered as an alternative to the locked setting.

(f) Examining whether the state has the capability to conduct competent and comprehensive assessments on each youth.

(g) Reviewing programs from other states that are considered the standard bearers in youth corrections.

(h) Examining youth corrections goals in terms of offender accountability, best interest of the minor, public safety protection and risk control, and whether youth corrections agencies are able to carefully and comprehensively access the needs of youth under their control.

(i) Promoting public and personal awareness and understanding of the knowledge, policies, and programs that are most likely to be effective in reducing recidivism among juveniles.

(j) Providing the Governor and the Legislature with a plan for incorporating findings regarding recidivism, as appropriate, into policy development and for educating all Californians about these matters.

13752. (a) In order to provide breadth of perspective and public credibility, the task force shall consist of 17 members, broadly reflective of the general public of the state, including persons of color, women, and persons from varying economic levels, all of whom have demonstrated abilities, vision, or experience in the correctional field. The task force should include persons from large and small counties.

(b) The membership of the task force shall include the Chair of the Assembly Committee on Public Safety and the Chair of the Senate Judiciary Committee, or their designees, and the remainder shall be appointed as follows:

(1) The Senate Committee on Rules shall appoint a citizen member, a public defender or member of the criminal defense bar, and a judge of a juvenile court. The Speaker of the Assembly shall appoint a district attorney, a representative from the field of education, and a citizen member.

(2) The Governor shall designate the chairperson of the task force and shall appoint nine members, including a county sheriff, a director of social services or representative of an organization serving juveniles, the Director of the Youth Authority, a chief probation officer, a person who specializes in the area of substance abuse treatment, a mental health professional specializing in juveniles, and three other members.

(3) Each appointing authority shall make the required appointments not later than January 15, 1995.

(c) The Governor or his or her designee shall call the first meeting of the task force not later than February 15, 1995.

(d) In making appointments to the task force, each appointing authority is encouraged to appoint persons from varying backgrounds and opinions to create a balanced task force. Appointments shall be made from among California citizens who have demonstrated abilities, vision, or experience in correctional philosophy.

(e) In the event of a resignation, the inability of a member to continue service, or other vacancy, a new member shall be appointed to the task force by the original appointing authority in accordance with the requirements applicable to an original appointment.

(f) Task force members shall be reimbursed for their travel and per diem expenses.

(g) The chairperson shall appoint a search committee reflective of the composition of the task force, which shall, in turn, make recommendations to the task force concerning the employment of the executive director and other appropriate staff. The task force may delegate to an executive committee comprised of its members the responsibility of overseeing the operations of the task force. This delegation, however, shall not release a task force member from the obligations imposed by this title.

(h) Office facilities and other in-kind service shall be provided by the Department of the Youth Authority.

13753. To accomplish the tasks enumerated in Section 13751, the task force is authorized to do the following:

(a) Sponsor and conduct public hearings and conferences, collect and disseminate information, and issue periodic reports relating to its findings, concerning juvenile justice.

(b) Make findings and recommendations applicable to the relevant areas of study as specified in Section 13751 that will enhance the broadest possible understanding and appreciation by policymakers and all Californians toward improving the juvenile justice system. In making those recommendations, the task force shall do all of the following:

(1) Include recommendations that address the immediate and long-term possible impacts of each area of study, as well as specific proposals for immediate implementation.

(2) Include proposals in its findings, conclusions, and recommendations, including, but not limited to, possible legislation, departmental regulations, funding for the establishment, replication, and expansion of proven programs, and other matters of state and municipal policy and administration.

(3) Include in these policy and program recommendations, whenever possible, quantifiable cost-benefit analyses and seek whenever possible to utilize existing programs that are effectively managed and are local, private, and community-based.

(4) The task force shall prioritize its recommendations based on

a determination of the recommendations that it deems to be the most financially feasible and cost-effective.

(c) Identify and promote ways in which nongovernmental institutions, including family, social, and religious organizations, can be more effectively enlisted in the reduction of recidivism.

(d) Render advice and information, as requested, to the state and municipal governments, and in response to inquiries by the public.

(e) Annually provide to the Department of Finance, the Assembly Ways and Means Committee, and the Senate Budget and Fiscal Review Committee any policy and programmatic recommendations with respect to juvenile justice reform that may affect the state budgetary process.

(f) Apply to the federal government or any agency thereof and to any other source or agency, whether public or private, for a gift or grant of any funds as may be available, up to two hundred fifty thousand dollars ($250,000) for any of the purposes of this title.

13754. Any additional state costs associated with the implementation of this title shall be borne by the Department of the Youth Authority within its existing budget.

13755. The task force shall provide an interim report to the Legislature by June 15, 1995, and submit its findings and recommendations to the Legislature in a final report by April 15, 1996.

13756. This title shall become inoperative on September 1, 1996, and as of January 1, 1997, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 455

An act to amend Sections 1774, 1775.1, 1775.2, 1775.3, 1775.4, 1775.5, and 1776.8 of the Insurance Code, relating to insurance.

[Approved by Governor September 9, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 1774 of the Insurance Code is amended to read:

1774. (a) On or before the first day of April of each year the surplus line broker shall file with the commissioner a sworn statement of all business transacted under his or her surplus line license during the last preceding calendar year. Such statement shall contain an account of the business done by the surplus line broker for the prior year.

(b) For purposes of this chapter, "business done" or "business transacted" under a surplus line broker's license means all insurance

regarding which that surplus line broker is required to file a confidential written report with the commissioner or the commissioner's designee pursuant to subdivision (a) of Section 1763. If two or more persons licensed as surplus line brokers are involved in placing a policy, only the one who is responsible for negotiating, effecting the placement, remitting the premium to the nonadmitted insurer or its representatives and filing the confidential written report pursuant to subdivision (a) of Section 1763, shall be considered transacting under his or her surplus line broker's license.

(c) The date on which the surplus line broker transacting a policy prepares a bill or invoice for payment of all or part of the premiums due, shall be considered the date on which that business was done or transacted, subject to paragraph (d). This date shall be shown on the face of the bill or invoice and shall be referred to as the "invoice date."

(d) (1) The invoice date shall be no more than 60 days after the policy effective date and no more than 60 days after the insurance was placed with a nonadmitted insurer, except as provided in paragraph (2) of this section.

(2) If the premium is billed and payable in installments, the invoice date of the first installment shall be no more than 60 days after the policy effective date and no more than 60 days after the insurance was placed with a nonadmitted insurer, and thereafter each installment shall be no more than one installment period after the invoice date of the immediately preceding installment.

SEC. 2. Section 1775.1 of the Insurance Code is amended to read:

1775.1. (a) For the calendar year 1995, and each calendar year thereafter, every surplus line broker whose annual tax for the preceding calendar year was five thousand dollars ($5,000) or more shall make monthly installment payments on account of the annual tax on business done during the current calendar year imposed by Section 1775.5.

(b) Notwithstanding any other provision, the commissioner may relieve a surplus line broker of his or her obligation to make monthly payments where the broker establishes to the satisfaction of the commissioner that either the broker has ceased to transact business in this state, or his or her annual tax for the current year will be less than five thousand dollars ($5,000).

SEC. 3. Section 1775.2 of the Insurance Code is amended to read:

1775.2. On or before March 1 of each year, the commissioner shall notify by mail each surplus line broker whose annual tax for the preceding calendar year was five thousand dollars ($5,000) or more, that the broker is required to make monthly payments, on a monthly basis as set forth in Section 1775.3, of the tax on account of business done during the current calendar year. With the notice the commissioner shall mail the installment payment forms prescribed by the commissioner to be used by the broker to accompany remittances of the required monthly installment payments. A failure to give or to receive a notice or to send or receive installment

payment forms shall not relieve any broker of responsibility to make monthly installment payments.

SEC. 4. Section 1775.3 of the Insurance Code is amended to read:

1775.3. Each surplus line broker required to make monthly installment payments shall remit them on or before the first day of the third calendar month following the end of the accounting month in which the business was done. The annual payment under Section 1775.5 shall be in lieu of an installment payment under this section for the accounting month of December. Remittances for those payments shall be made payable to the commissioner and shall be made by electronic fund transfer in accordance with Section 1775.8 or delivered to the office of the commissioner, accompanied by an installment payment form prescribed by the commissioner if remittance by electronic fund transfer is not mandatory under Section 1775.8.

SEC. 5. Section 1775.4 of the Insurance Code is amended to read:

1775.4. (a) The amount of the payment shall be 3 percent of the gross premiums less return premiums upon business done by the surplus line broker under the authority of his or her license during the calendar month ending two calendar months immediately preceding the due date of the payment, as specified in Section 1775.3, excluding gross premiums and return premiums paid by him or her upon business governed by the provisions of Section 1760.5. If during any calendar month those return premiums upon business done by a surplus line broker exceed the gross premiums upon the business done by him or her in that calendar month, then no payment shall be payable by him or her in respect to that calendar month, and he or she may carry forward that excess to the next succeeding calendar month or months and apply it in reduction of the taxable premiums on business done by him or her in that succeeding calendar month or months. Even though no payment shall be payable by the broker, he or she shall file a return showing that his or her return premiums exceeded his or her gross premiums.

(b) In determining the applicability of subdivision (a) of Section 1775.1 to a surplus line broker who has acquired the business of another surplus line broker, the amount of tax liability of the acquired broker for the immediately preceding calendar year shall be added to the amount of the tax liability of the acquiring broker for the immediately preceding calendar year.

(c) All amounts paid, other than penalties and interest, shall be allowed as a credit on the annual tax imposed by Section 1775.5.

(d) If the total amount of monthly installment payments for any calendar year exceeds the amount of annual tax for that year, the excess shall be treated as an overpayment of annual tax and be allowed as a credit or refund.

(e) A penalty of 10 percent of the amount of the monthly payment due shall be levied upon and paid by any surplus line broker who fails to make the necessary payment within the time required, plus interest at the rate of 1 percent per calendar month or fraction

thereof from the due date of the payment until the date payment is received by the commissioner, but not for any period after the due date of the annual tax. The commissioner may remit the penalty in a case where he or she finds, as a result of examination or otherwise, that the failure of, or delay in, payment arose out of excusable mistake or excusable inadvertence.

(f) For any part of a payment required that was not made within the time required by law, when the nonpayment or late payment was due to fraud on the part of the taxpayer, a penalty of 25 percent of the amount unpaid shall be added thereto, in addition to all other penalties otherwise imposed.

(g) The commissioner, upon a showing of good cause, may extend for not to exceed 10 days the time for making a monthly payment. The extension may be granted at any time, provided that a request therefor is filed with the commissioner within or prior to the period for which the extension may be granted. No interest shall be paid for the period of time for which the extension is granted.

SEC. 6. Section 1775.5 of the Insurance Code is amended to read:

1775.5. Every surplus line broker shall annually, on or before the first day of March of each year pay to the Insurance Commissioner for the use of the State of California a tax of 3 percent of the gross premiums less return premiums upon business done by him or her under authority of his or her license during the preceding calendar year, excluding premiums upon business done by the provisions of Section 1760.5. If during any calendar year 3 percent of such return premiums upon business done by a surplus line broker exceed 3 percent of the gross premiums upon such business done by him or her in that year, then he or she may either carry forward such excess to the next succeeding year and apply it as a credit against 3 percent of gross premiums on such business done by him or her in such succeeding year, or he or she may elect to receive, and thereupon be paid a refund equal to the amount of taxes theretofore paid by him or her on such excess of return premiums paid over gross premiums received.

For the purpose of determining such tax, the total premium charged for all such nonadmitted insurance placed in a single transaction with one underwriter or group of underwriters, whether in one or more policies, shall be allocated to this state in such proportion as the total premium on the insured properties or operations in this state, as computed on the exposure in this state on the basis of any single standard rating method in use in all states or countries where such insurance applies, bears to the total premium so computed in all states or countries in which such nonadmitted insurance may apply. This provision shall not apply to interstate motor transit operations conducted between this and other states. With respect to such operations surplus line tax shall be payable on the entire premium charged on all nonadmitted insurance, less the following:

(a) Such portion of the premium as is determined, as herein

provided, to have been charged for operations in other states taxing such premium on operations in such states of an insured maintaining its headquarters office in this state.

(b) The premium for any operations outside of this state of an insured who maintains a headquarters operating office outside of this state and a branch office in this state.

A penalty of 10 percent of the amount of the payment due shall be levied upon and paid by any surplus line broker who fails to make the necessary payment within the time required, plus interest at the rate of 1 percent per calendar month or fraction thereof, from March 1, the due date of the annual tax, until the date the payment is received by the commissioner. The commissioner, upon a showing of good cause, may extend for not to exceed 30 days, the time for filing a tax return or paying any amount required to be paid with the return. The extension may be granted at any time, provided that a request therefor is filed with the commissioner within, or prior to, the period for which the extension may be granted.

Any surplus line broker to whom an extension is granted shall, in addition to the tax, pay interest at the rate of 1 percent per month or fraction thereof from March 1, until the date of payment. The commissioner may remit the penalty in a case where the commissioner finds, as a result of examination or otherwise, that the failure of or delay in payment arose out of excusable mistake or excusable inadvertence.

For any part of a payment required by this section or by Section 1775.4 which was not made within the time required by law, when such nonpayment or late payment was due to fraud on the part of the broker, a penalty of 25 percent of the amount unpaid shall be added thereto, in addition to all other penalties otherwise imposed.

SEC. 7. Section 1776.8 of the Insurance Code is amended to read:

1776.8. (a) On and after January 1, 1994, and before January 1, 1995, every surplus line broker whose annual taxes for business done in calendar year 1992 or whose quarterly taxes for business done in calendar year 1993 exceed fifty thousand dollars ($50,000) shall make payment by electronic funds transfer. On and after January 1, 1995, every surplus line broker whose annual taxes for business done in calendar year 1993 or in any calendar year thereafter exceed twenty thousand dollars ($20,000) shall make payment by electronic funds transfer. The surplus line broker shall choose one of the acceptable methods described in Section 45 for completing the electronic funds transfer.

(b) Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(c) (1) Any surplus line broker required to remit taxes by electronic funds transfer pursuant to this section who remits those

taxes by means other than an appropriate electronic funds transfer, shall be assessed a penalty in an amount equal to 10 percent of the taxes due at the time of the payment.

(2) If the Department of Insurance finds that a surplus line broker's failure to make a timely payment is due to reasonable cause or circumstances beyond the surplus line broker's control, and occurred notwithstanding the exercise of ordinary care, and in the absence of willful neglect, the surplus line broker shall be relieved of the penalty provided in paragraph (1).

(3) Any surplus line broker seeking to be relieved of the penalty provided in paragraph (1) shall file a statement under penalty of perjury setting forth the facts upon which the surplus line broker bases his or her claim for relief with the Department of Insurance.

CHAPTER 456

An act to amend Sections 5371.1, 5371.2, 5373.1, 5374, 5383, 5384, and 5401 of the Public Utilities Code, relating to carriers.

[Approved by Governor September 9, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 5371.1 of the Public Utilities Code is amended to read:

5371.1. (a) No charter-party carrier of passengers issued a class A certificate subject to this section shall be restricted as to point of origin or destination in the State of California.

(b) Every application for a certificate or permit, or renewal thereof, shall be accompanied by the appropriate fee as specified in Section 5373.1.

SEC. 2. Section 5371.2 of the Public Utilities Code is amended to read:

5371.2. All holders of certificates issued under this section shall operate from a service area to be determined by the commission. In no case shall this area encompass more than a radius of 125 air miles from the home terminal. The home terminal shall be designated by the applicant. This certificate shall be classified as a class B certificate. This section shall not apply to certificates subject to Section 5371.1 .

SEC. 3. Section 5373.1 of the Public Utilities Code is amended to read:

5373.1. (a) Each application for a charter-party carrier of passengers certificate or permit shall be accompanied by a filing fee as follows:

(1) Class A certificates (new): one thousand five hundred dollars ($1,500).

(2) Class A certificates (renewal): five hundred dollars ($500).

(3) Class B certificates (new and renewal): five hundred dollars ($500).

(4) Class C certificates (new and renewal): five hundred dollars ($500).

(5) Permits (new and renewal): five hundred dollars ($500).

(b) The commission shall also require each application to be accompanied by a fee to offset the cost of the charter-party carrier bus terminal inspections conducted by the Department of the California Highway Patrol. The fee shall be fifteen dollars ($15) per tour bus, as defined in Section 612 of the Vehicle Code, or a maximum of six thousand five hundred dollars ($6,500) for each operating carrier.

(c) The commission shall require each charter-party carrier that operates tour buses, as defined in Section 612 of the Vehicle Code, to undergo an annual bus terminal inspection conducted by the Department of the California Highway Patrol and to pay an annual fee of fifteen dollars ($15) per tour bus, or a maximum of six thousand five hundred dollars ($6,500), to offset the cost of the inspections.

(d) The commission shall deposit the fees collected pursuant to subdivisions (b) and (c) in the Motor Vehicle Account in the State Transportation Fund.

SEC. 4. Section 5374 of the Public Utilities Code is amended to read:

5374. (a) Before a permit is issued or renewed, the commission shall require the applicant to establish reasonable fitness and financial responsibility to initiate and conduct or continue to conduct the proposed or existing transportation services. The commission shall not issue or renew a permit pursuant to this chapter unless the applicant certifies on a form acceptable to the commission that the applicant will maintain its vehicles in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

(b) (1) Before a certificate is issued or renewed, the commission shall require the applicant to establish reasonable fitness and financial responsibility to initiate and conduct or continue to conduct the proposed or existing transportation services. The commission shall not issue or renew a certificate pursuant to this chapter unless the applicant meets all of the following requirements:

(A) It is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(B) It is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subcarriers, operating vehicles in transportation for compensation under the certificate.

(C) It has a preventive maintenance program in effect for its

vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

(D) It participates in a program to regularly check the driving records of all persons, whether employees or subcarriers, operating vehicles used in transportation for compensation requiring a class B driver's license under the certificate.

(E) It has a safety education and training program in effect for all employees or subcarriers operating vehicles used in transportation for compensation.

(F) It will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

(G) It has filed with the commission the certificate of workers' compensation insurance coverage or statement required by Section 5378.1.

(H) It has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this subdivision may be inspected by the commission and the Department of the California Highway Patrol.

(2) With respect to subparagraphs (B) and (F) of paragraph (1), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply.

(c) In addition to the requirements in subdivision (b), class A and class B charter-party carriers shall meet all other state and, where applicable, federal regulations as prescribed.

SEC. 5. Section 5383 of the Public Utilities Code is amended to read:

5383. The commission shall create the following classifications or types of certificates for charter-party carriers of passengers:

Class A: from any point or points within the state to other points in or out of this state, including, but not limited to, the conduction of round-trip sightseeing tour service.

Class B: from any point within the territory of origin specified in the certificate to any points in the state, or territory of origin.

Class C: services provided incidental to commercial balloon operations, commercial river rafting, or skiing where no additional compensation is provided for the transportation.

SEC. 6. Section 5384 of the Public Utilities Code is amended to read:

5384. The commission shall issue permits to persons, who are otherwise qualified, whose passenger carrier operations fall into the following categories:

(a) Specialized carriers, who do not hold themselves out to serve the general public, but only provide service under contract with industrial and business firms, governmental agencies, and private schools or who only transport agricultural workers to and from farms

for compensation or who only conduct transportation services, which are incidental to another business. This permit shall be designated as a "Z" permit.

(b) Carriers using only vehicles under 15-passenger seating capacity. This permit shall be designated as a "P" permit.

(c) Carriers conducting round-trip sightseeing tour service. This permit shall be designated as an "S" permit.

SEC. 7. Section 5401 of the Public Utilities Code is amended to read:

5401. Charges for the transportation to be offered or afforded by a charter-party carrier of passengers shall be computed and assessed on a vehicle mileage or time of use basis, or on a combination thereof. These charges may vary in accordance with the passenger capacity of the vehicle, or the size of the group to be transported. However, no charter-party carrier of passengers shall, directly or through an agent or otherwise, nor shall any broker, contract, agree, or arrange to charge, or demand or receive compensation, for the transportation offered or afforded that shall be computed, charged, or assessed on an individual-fare basis, except schoolbus contractors who are compensated by parents of children attending public, private, or parochial schools and except operators of round-trip sightseeing tour services conducted under a certificate subject to Section 5371.1, or a permit issued pursuant to subdivision (c) of Section 5384.

CHAPTER 457

An act to amend Sections 1044, 1079, 3742, 3802.5, 5259, and 5415.5 of the Public Utilities Code, relating to carriers.

[Approved by Governor September 9, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 1044 of the Public Utilities Code is amended to read:

1044. When the executive director of the commission determines that any passenger stage corporation, or any officer, director, or agent of any passenger stage corporation, has engaged in, is engaged in, or is about to engage in, any acts or practices in violation of this chapter, or any order, decision, rule, regulation, direction, demand, or requirement issued under this chapter, the executive director may make application to the superior court for an order enjoining those acts or practices or for an order directing compliance. The court may grant a permanent or temporary injunction, restraining order, or other order, including, but not limited to, an order allowing vehicles used for subsequent operations subject to the order to be

impounded at the carrier's expense and subject to release only by subsequent court order following a petition to the court by the defendant or owner of the vehicle, upon a showing by the executive director that a person or corporation has engaged in or is about to engage in these acts or practices.

SEC. 2. Section 1079 of the Public Utilities Code is amended to read:

1079. When the executive director of the commission determines that any highway common carrier or cement carrier, or any officer, director, or agent of any highway common carrier or cement carrier, has engaged in, is engaged in, or is about to engage in, any acts or practices in violation of this chapter, or any order, decision, rule, regulation, direction, demand, or requirement issued under this chapter, the executive director may make application to the superior court for an order enjoining those acts or practices or for an order directing compliance. The court may grant a permanent or temporary injunction, restraining order, or other order, including, but not limited to, an order allowing vehicles used for subsequent operations subject to the order to be impounded at the carrier's expense and subject to release only by subsequent court order following a petition to the court by the defendant or owner of the vehicle, upon a showing by the executive director that a person or corporation has engaged in or is about to engage in these acts or practices.

SEC. 3. Section 3742 of the Public Utilities Code is amended to read:

3742. When the executive director of the commission determines that any highway carrier, or any officer, director, or agent of any highway carrier, has engaged in, is engaged in, or is about to engage in, any acts or practices in violation of this chapter, or any order, decision, rule, regulation, direction, demand, or requirement issued under this chapter, the executive director may make application to the superior court for an order enjoining those acts or practices or for an order directing compliance. The court may grant a permanent or temporary injunction, restraining order, or other order, including, but not limited to, an order allowing vehicles operating in a violation of an injunction, restraining order, or other order, to be impounded at the carrier's expense and subject to release only by subsequent court order following a petition to the court by the defendant or owner of the vehicle, upon a showing by the executive director that a person or corporation has engaged in or is about to engage in these acts or practices.

SEC. 4. Section 3802.5 of the Public Utilities Code is amended to read:

3802.5. When the executive director of the commission determines that any corporation or person has engaged in, is engaged in, or is about to engage in any acts or practices that are a violation of this chapter or any order, decision, rule, regulation, direction, demand, or requirement issued thereunder, the executive

director may make application to the superior court for an order enjoining these acts or practices or for an order directing compliance. The court may grant a permanent or temporary injunction, restraining order, or other order, including, but not limited to, an order allowing vehicles used for subsequent operations subject to the order to be impounded at the carrier's expense and subject to release only by subsequent court order following a petition to the court by the defendant or owner of the vehicle, upon a showing by the executive director that a person or corporation has engaged in or is about to engage in these acts or practices.

SEC. 5. Section 5259 of the Public Utilities Code is amended to read:

5259. Whenever the executive director of the commission determines that any household goods carrier or any officer, director, or agent of any household goods carrier is failing or omitting or about to fail or omit, to do anything required of it by law, or by any order, decision, rule, direction, or requirement of the commission, or is doing anything or about to do anything, or permitting anything or about to permit anything to be done, in violation of law or of any order, decision, rule, direction, or requirement of the commission, the executive director may make application to the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of has its principal place of business, or in which the person complained of resides, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction, including, but not limited to, an order allowing vehicles used for subsequent operations subject to the order to be impounded at the carrier's expense and subject to release only by subsequent court order following a petition to the court by the defendant or owner of the vehicle. The executive director shall thereupon begin such action or proceeding in the name of the people of the State of California, by petition to such superior court, alleging the violation or threatened violation complained of and praying for appropriate relief by way of mandamus or injunction.

SEC. 6. Section 5415.5 of the Public Utilities Code is amended to read:

5415.5. When the executive director of the commission determines that any charter-party carrier of passengers, or any officer, director, or agent of any charter-party carrier of passengers, has engaged in, is engaged in, or is about to engage in, any acts or practices in violation of this chapter, or any order, decision, rule, regulation, direction, demand, or requirement issued under this chapter, the executive director may make application to the superior court for an order enjoining those acts or practices or for an order directing compliance. The court may grant a permanent or temporary injunction, restraining order, or other order, including, but not limited to, an order allowing vehicles used for subsequent operations subject to the order to be impounded at the carrier's

expense and subject to release only by subsequent court order following a petition to the court by the defendant or owner of the vehicle, upon a showing by the executive director that a person or corporation has engaged in or is about to engage in these acts or practices.

CHAPTER 458

An act to amend Section 8771 of the Business and Professions Code, to amend Sections 66412, 66424, 66426.5, 66428, 66434, 66445, and 66477.2 of, and to add Section 66452.12 to, the Government Code, and to add Sections 732.5, 1492.5, and 1810.5 to, the Streets and Highways Code, relating to land use.

[Approved by Governor September 9, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 8771 of the Business and Professions Code is amended to read:

8771. Monuments set shall be sufficient in number and durability and efficiently placed so as not to be readily disturbed, to assure, together with monuments already existing, the perpetuation or facile re-establishment of any point or line of the survey.

When monuments exist which control the location of subdivisions, tracts, streets, or highways, or provide survey control, the monuments shall be located and referenced by or under the direction of a licensed land surveyor or registered civil engineer prior to the time when any streets or highways are reconstructed or relocated and a corner record of the references shall be filed with the county surveyor. They shall be reset in the surface of the new construction, a suitable monument box placed thereon, or permanent witness monuments set to perpetuate their location and a corner record filed with the county surveyor prior to the recording of a certificate of completion for the project. Sufficient controlling monuments shall be retained or replaced in their original positions to enable land lines, property corners, and tract boundaries to be re-established without devious surveys necessarily originating on monuments differing from those that currently control the area. It shall be the responsibility of the governmental agency or others performing construction work to provide for the monumentation required by this section. It shall be the duty of every land surveyor or civil engineer to cooperate with the governmental agency in matters of maps, field notes, and other pertinent records. Monuments set to mark the limiting lines of highways, roads, or streets shall not be deemed adequate for this purpose unless specifically noted on the records of the improvement works with

direct ties in bearing or azimuth and distance between these and other monuments of record.

SEC. 2. Section 66412 of the Government Code is amended to read:

66412. This division shall be inapplicable to:

(a) The financing or leasing of apartments, offices, stores, or similar space within apartment buildings, industrial buildings, commercial buildings, mobilehome parks, or trailer parks.

(b) Mineral, oil, or gas leases.

(c) Land dedicated for cemetery purposes under the Health and Safety Code.

(d) A lot line adjustment between two or more existing adjacent parcels, where the land taken from one parcel is added to an adjacent parcel, and where a greater number of parcels than originally existed is not thereby created, provided the lot line adjustment is approved by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to local zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to local zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, parcel map, or final map shall be required as a condition to the approval of a lot line adjustment. The lot line adjustment shall be reflected in a deed, which shall be recorded. No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code.

(e) Boundary line or exchange agreements to which the State Lands Commission or a local agency holding a trust grant of tide and submerged lands is a party.

(f) Any separate assessment under Section 2188.7 of the Revenue and Taxation Code.

(g) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a community apartment project, as defined in Section 11004 of the Business and Professions Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 75 percent of the units in the project were occupied by record owners of the project on March 31, 1982.

(2) A final or parcel map of the project was properly recorded, if the property was subdivided, as defined in Section 66424, after January 1, 1964, with all of the conditions of that map remaining in effect after the conversion.

(3) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(h) Unless a parcel or final map was approved by the legislative

body of a local agency, the conversion of a stock cooperative, as defined in Section 11003.2 of the Business and Professions Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 51 percent of the units in the cooperative were occupied by stockholders of the cooperative on January 1, 1981, or individually owned by stockholders of the cooperative on January 1, 1981. As used in this paragraph, a cooperative unit is "individually owned" if and only if the stockholder of that unit owns or partially owns an interest in no more than one unit in the cooperative.

(2) No more than 25 percent of the shares of the cooperative were owned by any one person, as defined in Section 17, including an incorporator or director of the cooperative, on January 1, 1981.

(3) A person renting a unit in a cooperative shall be entitled at the time of conversion to all tenant rights in state or local law, including, but not limited to, rights respecting first refusal, notice, and displacement and relocation benefits.

(4) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(i) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of a windpowered electrical generation device on the land, if the project is subject to discretionary action by the advisory agency or legislative body.

(j) The leasing or licensing of a portion of a parcel, or the granting of an easement, use permit, or similar right on a portion of a parcel, to a telephone corporation as defined in Section 234 of the Public Utilities Code, exclusively for the placement and operation of cellular radio transmission facilities, including, but not limited to, antennae support structures, microwave dishes, structures to house cellular communications transmission equipment, power sources, and other equipment incidental to the transmission of cellular communications, if the project is subject to discretionary action by the advisory agency or legislative body.

(k) Leases of agricultural land for agricultural purposes. As used in this subdivision, "agricultural purposes" means the cultivation of food or fiber, or the grazing or pasturing of livestock.

SEC. 3. Section 66424 of the Government Code is amended to read:

66424. "Subdivision" means the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way. "Subdivision" includes a condominium project, as defined in subdivision (f) of Section 1351 of the Civil Code, a community apartment project, as defined in

subdivision (d) of Section 1351 of the Civil Code, or the conversion of five or more existing dwelling units to a stock cooperative, as defined in subdivision (m) of Section 1351 of the Civil Code.

SEC. 4. Section 66426.5 of the Government Code is amended to read:

66426.5. Any conveyance of land to a governmental agency, public entity, public utility or subsidiary of a public utility for conveyance to that public utility for rights-of-way shall not be considered a division of land for purposes of computing the number of parcels. For purposes of this section, any conveyance of land to a governmental agency shall include a fee interest, an easement, or a license.

SEC. 5. Section 66428 of the Government Code is amended to read:

66428. (a) Local ordinances may require a tentative map where a parcel map is required by this chapter. A parcel map shall be required for subdivisions as to which a final or parcel map is not otherwise required by this chapter, unless the preparation of the parcel map is waived by local ordinance as provided in this section. A parcel map shall not be required for either of the following:

(1) Subdivisions of a portion of the operating right-of-way of a railroad corporation, as defined by Section 230 of the Public Utilities Code, which are created by short-term leases (terminable by either party on not more than 30 days' notice in writing).

(2) Land conveyed to or from a governmental agency, public entity, public utility, or for land conveyed to a subsidiary of a public utility for conveyance to that public utility for rights-of-way, unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates a parcel map. For purposes of this subdivision, land conveyed to or from a governmental agency shall include a fee interest, an easement, or a license.

(b) A local agency shall, by ordinance, provide a procedure for waiving the requirement for a parcel map, imposed by this division, including the requirements for a parcel map imposed by Section 66426. The procedure may include provisions for waiving the requirement for a tentative and final map for the construction of a condominium project on a single parcel. The ordinance shall require a finding by the legislative body or advisory agency, that the proposed division of land complies with requirements established by this division or local ordinance enacted pursuant thereto as to area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, and other requirements of this division or local ordinance enacted pursuant thereto. In any case, where the requirement for a parcel map is waived by local ordinance pursuant to this section, a tentative map may be required by local ordinance.

(c) If a local ordinance does not require a tentative map where a parcel map is required by this division, the subdivider shall have the

option of submitting a tentative map, or if he or she desires to obtain the rights conferred by Chapter 4.5 (commencing with Section 66498.1), a vesting tentative map.

SEC. 6. Section 66452.12 is added to the Government Code, to read:

66452.12. (a) Any permit issued by a local agency in conjunction with a tentative subdivision map for a planned unit development shall expire pursuant to Section 65863.9.

(b) Conditions or requirements for the issuance of a building permit or equivalent permit may be imposed pursuant to Section 65961.

SEC. 7. Section 66434 of the Government Code is amended to read:

66434. The final map shall be prepared by or under the direction of a registered civil engineer or licensed land surveyor, shall be based upon a survey, and shall conform to all of the following provisions:

(a) It shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record in black on tracing cloth or polyester base film. Certificates, affidavits, and acknowledgments may be legibly stamped or printed upon the map with opaque ink. If ink is used on polyester base film, the ink surface shall be coated with a suitable substance to assure permanent legibility.

(b) The size of each sheet shall be 18 by 26 inches. A marginal line shall be drawn completely around each sheet, leaving an entirely blank margin of one inch. The scale of the map shall be large enough to show all details clearly and enough sheets shall be used to accomplish this end. The particular number of the sheet and the total number of sheets comprising the map shall be stated on each of the sheets, and its relation to each adjoining sheet shall be clearly shown.

(c) All survey and mathematical information and data necessary to locate all monuments and to locate and retrace any and all interior and exterior boundary lines appearing thereon shall be shown, including bearings and distances of straight lines, and radii and arc length or chord bearings and length for all curves, and any information which may be necessary to determine the location of the centers of curves and ties to existing monuments used to establish the subdivision boundaries.

(d) Each parcel shall be numbered or lettered and each block may be numbered or lettered. Each street shall be named or otherwise designated.

(e) The exterior boundary of the land included within the subdivision shall be indicated by distinctive symbols and clearly so designated. The map shall show the definite location of the subdivision, and particularly its relation to surrounding surveys.

If the map includes a "designated remainder" parcel, and the gross area of the "designated remainder" parcel or similar parcel is five acres or more, that remainder parcel need not be shown on the map and its location need not be indicated as a matter of survey, but only by deed reference to the existing boundaries of the remainder

parcel.

A parcel designated as "not a part" shall be deemed to be a "designated remainder" for purposes of this section.

(f) On and after January 1, 1987, no additional requirements shall be included which do not affect record title interests. However, the map shall contain a notation or reference to additional information required by a local ordinance adopted pursuant to Section 66434.2.

SEC. 8. Section 66445 of the Government Code is amended to read:

66445. The parcel map shall be prepared by, or under the direction of, a registered civil engineer or licensed land surveyor, shall show the location of streets and property lines bounding the property, and shall conform to all of the following provisions:

(a) It shall be legibly drawn, printed or reproduced by a process guaranteeing a permanent record in black on tracing cloth or polyester base film. Certificates or statements, affidavits, and acknowledgments may be legibly stamped or printed upon the map with opaque ink. If ink is used on polyester base film, the ink surface shall be coated with a suitable substance to assure permanent legibility.

(b) The size of each sheet shall be 18 by 26 inches. A marginal line shall be drawn completely around each sheet, leaving an entirely blank margin of one inch. The scale of the map shall be large enough to show all details clearly and enough sheets shall be used to accomplish this end. The particular number of the sheet and the total number of sheets comprising the map shall be stated on each of the sheets, and its relation to each adjoining sheet shall be clearly shown.

(c) Each parcel shall be numbered or lettered and each block may be numbered or lettered. Each street shall be named or otherwise designated.

(d) (1) The exterior boundary of the land included within the subdivision shall be indicated by distinctive symbols and clearly so designated.

(2) The map shall show the location of each parcel and its relation to surrounding surveys. If the map includes a "designated remainder" parcel or similar parcel, and the gross area of the "designated remainder" parcel or similar parcel is five acres or more, that remainder parcel need not be shown on the map and its location need not be indicated as a matter or survey, but only by deed reference to the existing boundaries of the remainder parcel.

(3) A parcel designated as "not a part" shall be deemed to be a "designated remainder" for purposes of this section.

(e) Subject to the provisions of Section 66436, a statement, signed and acknowledged by all parties having any record title interest in the real property subdivided, consenting to the preparation and recordation of the parcel map is required, except that less inclusive requirements may be provided by local ordinance.

With respect to a division of land into four or fewer parcels, where dedications or offers of dedications are not required, the statement

shall be signed and acknowledged by the subdivider only. If the subdivider does not have a record title ownership interest in the property to be divided, the local agency may require that the subdivider provide the local agency with satisfactory evidence that the persons with record title ownership have consented to the proposed division. For purposes of this paragraph, "record title ownership" shall mean fee title of record unless a leasehold interest is to be divided, in which case "record title ownership" shall mean ownership of record of the leasehold interest. "Record title ownership" does not include ownership of mineral rights or other subsurface interests which have been severed from ownership of the surface.

(f) Notwithstanding any other provision of this article, local agencies may require that those statements and acknowledgments required pursuant to subdivision (e) be made by separate instrument to be recorded concurrently with the parcel map being filed for record.

(g) On and after January 1, 1987, no additional survey and map requirements shall be included on a parcel map which do not affect record title interests. However, the map shall contain a notation of reference to survey and map information required by a local ordinance adopted pursuant to Section 66434.2.

(h) Whenever a certificate or acknowledgment is made by separate instrument, there shall appear on the final map a reference to the separately recorded document. This reference shall be completed by the county recorder pursuant to Section 66468.1.

(i) If a field survey was performed, the parcel map shall contain a statement by the engineer or surveyor responsible for the preparation of the map that states that all monuments are of the character and occupy the positions indicated, or that they will be set in those positions on or before a specified date, and that the monuments are, or will be, sufficient to enable the survey to be retraced.

SEC. 9. Section 66477.2 of the Government Code is amended to read:

66477.2. (a) If at the time the final map is approved, any streets, paths, alleys, public utility easements, rights-of-way for local transit facilities such as bus turnouts, benches, shelters, landing pads, and similar items, which directly benefit the residents of a subdivision, or storm drainage easements are rejected, subject to Section 771.010 of the Code of Civil Procedure, the offer of dedication shall remain open and the legislative body may by resolution at any later date, and without further action by the subdivider, rescind its action and accept and open the streets, paths, alleys, rights-of-way for local transit facilities such as bus turnouts, benches, shelters, landing pads, and similar items, which directly benefit the residents of a subdivision, or storm drainage easements for public use, which acceptance shall be recorded in the office of the county recorder.

(b) In the case of any subdivision fronting upon the ocean

coastline or bay shoreline, the offer of dedication of public access route or routes from public highways to land below the ordinary high watermark shall be accepted within three years after the approval of the final map; in the case of any subdivision fronting upon any public waterway, river, or stream, the offer of dedication of public access route or routes from public highways to the bank of the waterway, river, or stream and the public easement along a portion of the bank of the waterway, river, or stream shall be accepted within three years after the approval of the final map; in the case of any subdivision fronting upon any lake or reservoir which is owned in part or entirely by any public agency, including the state, the offer of dedication of public access route or routes from public highways to any water of the lake or reservoir shall be accepted within five years after the approval of the final map; all other offers of dedication may be accepted at any time.

(c) Offers of dedication which are covered by subdivision (a) may be terminated and abandoned in the same manner as prescribed for the summary vacation of streets by Part 3 (commencing with Section 8300) of Division 9 of the Streets and Highways Code.

(d) Offers of dedication which are not accepted within the time limits specified in subdivision (b) shall be deemed abandoned.

(e) Except as provided in Sections 66499.16, 66499.17, and 66499.18, if a resubdivision or reversion to acreage of the tract is subsequently filed for approval, any offer of dedication previously rejected shall be deemed to be terminated upon the approval of the map by the legislative body. The map shall contain a notation identifying the offer or offers of dedication deemed terminated by this subdivision.

SEC. 10. Section 732.5 is added to the Streets and Highways Code, to read:

732.5. Survey monuments shall be preserved, referenced, or replaced pursuant to Section 8771 of the Business and Professions Code.

SEC. 11. Section 1492.5 is added to the Streets and Highways Code, to read:

1492.5. Survey monuments shall be preserved, referenced, or replaced pursuant to Section 8771 of the Business and Professions Code.

SEC. 12. Section 1810.5 is added to the Streets and Highways Code, to read:

1810.5. Survey monuments shall be preserved, referenced, or replaced pursuant to Section 8771 of the Business and Professions Code.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the

provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 459

An act to validate the organization, boundaries, acts, proceedings, and bonds of public bodies, and to provide limitations of time wherein actions may be commenced, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. This act may be cited as the Second Validating Act of 1994.

SEC. 2. As used in this act:

(a) "Public body" means the state and all departments, agencies, boards, commissions, and authorities of the state. "Public body" also means all counties, cities and counties, cities, districts, authorities, agencies, boards, commissions, and other entities, whether created by a general statute or a special act, including, but not limited to, the following:

Agencies, boards, commissions, or entities constituted or provided for under or pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

Air pollution control districts of any kind.

Air quality management districts.

Airport districts.

Assessment districts, benefit assessment districts, and special assessment districts of any public body.

Bridge and highway districts.

California water districts.

Citrus pest control districts.

City maintenance districts.

Community college districts.

Community development commissions.

Community facilities districts.

Community redevelopment agencies.

Community rehabilitation districts.

Community services districts.

Conservancy districts.

Cotton pest abatement districts.

County boards of education.

County drainage districts.

County flood control and water districts.

County free library systems.

County maintenance districts.
County sanitation districts.
County service areas.
County transportation commissions.
County water agencies.
County water authorities.
County water districts.
County waterworks districts.
Department of Water Resources and other agencies acting pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.
Distribution districts of any public body.
Drainage districts.
Fire protection districts.
Flood control and water conservation districts.
Flood control districts.
Garbage and refuse disposal districts.
Garbage disposal districts.
Geologic hazard abatement districts.
Harbor districts.
Harbor improvement districts.
Harbor, recreation, and conservation districts.
Health care authorities.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Housing authorities.
Improvement districts or improvement areas of any public body.
Industrial development authorities.
Infrastructure financing districts.
Integrated financing districts.
Irrigation districts.
Joint highway districts.
Levee districts.
Library districts.
Library districts in unincorporated towns and villages.
Local agency formation commissions.
Local health care districts.
Local health districts.
Local hospital districts.
Local transportation authorities or commissions.
Maintenance districts.
Memorial districts.
Metropolitan transportation commissions.
Metropolitan water districts.
Mosquito abatement or vector control districts.
Municipal improvement districts.
Municipal utility districts.
Municipal water districts.

Nonprofit corporations.
Nonprofit public benefit corporations.
Open-space maintenance districts.
Parking authorities.
Parking districts.
Permanent road divisions.
Pest abatement districts.
Police protection districts.
Port districts.
Project areas of community redevelopment agencies.
Protection districts.
Public cemetery districts.
Public utility districts.
Rapid transit districts.
Reclamation districts.
Recreation and park districts.
Regional justice facility financing agencies.
Regional park and open-space districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.
Road maintenance districts.
Sanitary districts.
School districts of any kind or class.
Separation of grade districts.
Service authorities for freeway emergencies.
Sewer districts.
Sewer maintenance districts.
Small craft harbor districts.
Stone and pome fruit pest control districts.
Storm drain maintenance districts.
Storm drainage districts.
Storm drainage maintenance districts.
Storm water districts.
Toll tunnel authorities.
Traffic authorities.
Transit development boards.
Transit districts.
Unified and union school districts public libraries.
Vehicle parking districts.
Water agencies.
Water authorities.
Water conservation districts.
Water districts.
Water replenishment districts.
Water storage districts.
Wine grape pest and disease control districts.

Zones or service zones of any public body.

(b) "Bonds" means all instruments evidencing an indebtedness of a public body incurred or to be incurred for any public purpose, all leases, installment purchase agreements, or similar agreements wherein the obligor is one or more public bodies, all instruments evidencing the borrowing of money in anticipation of taxes, revenues, or other income of that body, all instruments payable from revenues or special funds of those public bodies, all certificates of participation evidencing interests in the leases, installment purchase agreements, or similar agreements, and all instruments funding, refunding, replacing, or amending any thereof or any indebtedness.

(c) "Hereafter" means any time subsequent to the effective date of this act.

(d) "Heretofore" means any time prior to the effective date of this act.

(e) "Now" means the effective date of this act.

SEC. 3. All public bodies heretofore organized or existing under, or under color of, any law, are hereby declared to have been legally organized and to be legally functioning as those public bodies. Every public body, heretofore described, shall have all the rights, powers, and privileges, and be subject to all the duties and obligations, of those public bodies regularly formed pursuant to law.

SEC. 4. The boundaries of every public body as heretofore established, defined, or recorded, or as heretofore actually shown on maps or plats used by the assessor, are hereby confirmed, validated, and declared legally established.

SEC. 5. All acts and proceedings heretofore taken by any public body or bodies under any law, or under color of any law, for the annexation or inclusion of territory into those public bodies or for the annexation of those public bodies to any other public body or for the withdrawal or exclusion of territory from any public body or for the consolidation, merger, or dissolution of any public bodies are hereby confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of any public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the annexation or inclusion or of the withdrawal or exclusion of territory or the consolidation, merger, or dissolution of those public bodies.

SEC. 6. All acts and proceedings heretofore taken by or on behalf of any public body under any law, or under color of any law, for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds of any public body for any public purpose are hereby authorized, confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of public bodies and of any person, public officer, board, or agency heretofore done or taken upon the question of the authorization, issuance, sale, execution, delivery, or exchange of bonds.

All bonds of, or relating to, any public body heretofore issued shall

be, in the form and manner issued and delivered, the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore awarded and sold to a purchaser and hereafter issued and delivered in accordance with the contract of sale and other proceedings for the award and sale shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued by ordinance, resolution, order, or other action adopted or taken by or on behalf of the public body and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued at an election and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. Whenever an election has heretofore been called for the purpose of submitting to the voters of any public body the question of issuing bonds for any public purpose, those bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with that authorization, shall be the legal, valid, and binding obligations of the public body.

SEC. 7. (a) This act shall operate to supply legislative authorization as may be necessary to authorize, confirm, and validate any acts and proceedings heretofore taken pursuant to authority the Legislature could have supplied or provided for in the law under which those acts or proceedings were taken.

(b) This act shall be limited to the validation of acts and proceedings to the extent that the same can be effectuated under the state and federal Constitutions.

(c) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter being legally contested or inquired into in any legal proceeding now pending and undetermined or that is pending and undetermined during the period of 30 days from and after the effective date of this act, and shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter that has heretofore been determined in any legal proceeding to be illegal, void, or ineffective.

(d) This act shall not operate to authorize, confirm, validate, or legalize a contract between any public body and the United States.

SEC. 8. Any action or proceeding contesting the validity of any action or proceeding heretofore taken under any law, or under color of any law, for the formation, organization, or incorporation of any public body, or for any annexation thereto, exclusion therefrom, or other change of boundaries thereof, or for the consolidation, merger, or dissolution of any public bodies, or for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds thereof upon any ground involving any alleged defect or illegality not effectively validated by the prior provisions of this act and not otherwise barred by any statute of limitations or by laches

shall be commenced within six months of the effective date of this act; otherwise each and all of those matters shall be held to be valid and in every respect legal and incontestable. This act shall not extend the period allowed for legal action beyond the period that it would be barred by any presently existing valid statute of limitations.

SEC. 9. Nothing contained in this act shall be construed to render the creation of any public body, or any change in the boundaries of any public body, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be filed pursuant to Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code, is filed within the time and substantially in the manner required by those sections.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To validate the organization, boundaries, acts, proceedings, and bonds of public bodies as soon as possible, it is necessary that this act take immediate effect.

CHAPTER 460

An act to validate the organization, boundaries, acts, proceedings, and bonds of public bodies, and to provide limitations of time wherein actions may be commenced.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. This act may be cited as the Third Validating Act of 1994.

SEC. 2. As used in this act:

(a) "Public body" means the state and all departments, agencies, boards, commissions, and authorities of the state. "Public body" also means all counties, cities and counties, cities, districts, authorities, agencies, boards, commissions, and other entities, whether created by a general statute or a special act, including, but not limited to, the following:

Agencies, boards, commissions, or entities constituted or provided for under or pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

Air pollution control districts of any kind.

Air quality management districts.

Airport districts.

Assessment districts, benefit assessment districts, and special assessment districts of any public body.

Bridge and highway districts.
California water districts.
Citrus pest control districts.
City maintenance districts.
Community college districts.
Community development commissions.
Community facilities districts.
Community redevelopment agencies.
Community rehabilitation districts.
Community services districts.
Conservancy districts.
Cotton pest abatement districts.
County boards of education.
County drainage districts.
County flood control and water districts.
County free library systems.
County maintenance districts.
County sanitation districts.
County service areas.
County transportation commissions.
County water agencies.
County water authorities.
County water districts.
County waterworks districts.
Department of Water Resources and other agencies acting pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.
Distribution districts of any public body.
Drainage districts.
Fire protection districts.
Flood control and water conservation districts.
Flood control districts.
Garbage and refuse disposal districts.
Garbage disposal districts.
Geologic hazard abatement districts.
Harbor districts.
Harbor improvement districts.
Harbor, recreation, and conservation districts.
Health care authorities.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Housing authorities.
Improvement districts or improvement areas of any public body.
Industrial development authorities.
Infrastructure financing districts.
Integrated financing districts.
Irrigation districts.
Joint highway districts.

Levee districts.
Library districts.
Library districts in unincorporated towns and villages.
Local agency formation commissions.
Local health care districts.
Local health districts.
Local hospital districts.
Local transportation authorities or commissions.
Maintenance districts.
Memorial districts.
Metropolitan transportation commissions.
Metropolitan water districts.
Mosquito abatement or vector control districts.
Municipal improvement districts.
Municipal utility districts.
Municipal water districts.
Nonprofit corporations.
Nonprofit public benefit corporations.
Open-space maintenance districts.
Parking authorities.
Parking districts.
Permanent road divisions.
Pest abatement districts.
Police protection districts.
Port districts.
Project areas of community redevelopment agencies.
Protection districts.
Public cemetery districts.
Public utility districts.
Rapid transit districts.
Reclamation districts.
Recreation and park districts.
Regional justice facility financing agencies.
Regional park and open-space districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.
Road maintenance districts.
Sanitary districts.
School districts of any kind or class.
Separation of grade districts.
Service authorities for freeway emergencies.
Sewer districts.
Sewer maintenance districts.
Small craft harbor districts.
Stone and pome fruit pest control districts.
Storm drain maintenance districts.

Storm drainage districts.
Storm drainage maintenance districts.
Storm water districts.
Toll tunnel authorities.
Traffic authorities.
Transit development boards.
Transit districts.
Unified and union school districts public libraries.
Vehicle parking districts.
Water agencies.
Water authorities.
Water conservation districts.
Water districts.
Water replenishment districts.
Water storage districts.
Wine grape pest and disease control districts.
Zones or service zones of any public body.

(b) "Bonds" means all instruments evidencing an indebtedness of a public body incurred or to be incurred for any public purpose, all leases, installment purchase agreements, or similar agreements wherein the obligor is one or more public bodies, all instruments evidencing the borrowing of money in anticipation of taxes, revenues, or other income of that body, all instruments payable from revenues or special funds of those public bodies, all certificates of participation evidencing interests in the leases, installment purchase agreements, or similar agreements, and all instruments funding, refunding, replacing, or amending any thereof or any indebtedness.

(c) "Hereafter" means any time subsequent to the effective date of this act.

(d) "Heretofore" means any time prior to the effective date of this act.

(e) "Now" means the effective date of this act.

SEC. 3. All public bodies heretofore organized or existing under, or under color of, any law, are hereby declared to have been legally organized and to be legally functioning as those public bodies. Every public body, heretofore described, shall have all the rights, powers, and privileges, and be subject to all the duties and obligations, of those public bodies regularly formed pursuant to law.

SEC. 4. The boundaries of every public body as heretofore established, defined, or recorded, or as heretofore actually shown on maps or plats used by the assessor, are hereby confirmed, validated, and declared legally established.

SEC. 5. All acts and proceedings heretofore taken by any public body or bodies under any law, or under color of any law, for the annexation or inclusion of territory into those public bodies or for the annexation of those public bodies to any other public body or for the withdrawal or exclusion of territory from any public body or for the consolidation, merger, or dissolution of any public bodies are hereby confirmed, validated, and declared legally effective. This shall

include all acts and proceedings of the governing board of any public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the annexation or inclusion or of the withdrawal or exclusion of territory or the consolidation, merger, or dissolution of those public bodies.

SEC. 6. All acts and proceedings heretofore taken by or on behalf of any public body under any law, or under color of any law, for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds of any public body for any public purpose are hereby authorized, confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of public bodies and of any person, public officer, board, or agency heretofore done or taken upon the question of the authorization, issuance, sale, execution, delivery, or exchange of bonds.

All bonds of, or relating to, any public body heretofore issued shall be, in the form and manner issued and delivered, the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore awarded and sold to a purchaser and hereafter issued and delivered in accordance with the contract of sale and other proceedings for the award and sale shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued by ordinance, resolution, order, or other action adopted or taken by or on behalf of the public body and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued at an election and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. Whenever an election has heretofore been called for the purpose of submitting to the voters of any public body the question of issuing bonds for any public purpose, those bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with that authorization, shall be the legal, valid, and binding obligations of the public body.

SEC. 7. (a) This act shall operate to supply legislative authorization as may be necessary to authorize, confirm, and validate any acts and proceedings heretofore taken pursuant to authority the Legislature could have supplied or provided for in the law under which those acts or proceedings were taken.

(b) This act shall be limited to the validation of acts and proceedings to the extent that the same can be effectuated under the state and federal Constitutions.

(c) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter being legally contested or inquired into in any legal proceeding now pending and undetermined or that is pending and undetermined during the

period of 30 days from and after the effective date of this act, and shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter that has heretofore been determined in any legal proceeding to be illegal, void, or ineffective.

(d) This act shall not operate to authorize, confirm, validate, or legalize a contract between any public body and the United States.

SEC. 8. Any action or proceeding contesting the validity of any action or proceeding heretofore taken under any law, or under color of any law, for the formation, organization, or incorporation of any public body, or for any annexation thereto, exclusion therefrom, or other change of boundaries thereof, or for the consolidation, merger, or dissolution of any public bodies, or for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds thereof upon any ground involving any alleged defect or illegality not effectively validated by the prior provisions of this act and not otherwise barred by any statute of limitations or by laches shall be commenced within six months of the effective date of this act; otherwise each and all of those matters shall be held to be valid and in every respect legal and incontestable. This act shall not extend the period allowed for legal action beyond the period that it would be barred by any presently existing valid statute of limitations.

SEC. 9. Nothing contained in this act shall be construed to render the creation of any public body, or any change in the boundaries of any public body, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be filed pursuant to Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code, is filed within the time and substantially in the manner required by those sections.

CHAPTER 461

An act to amend Section 361.2 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 361.2 of the Welfare and Institutions Code is amended to read:

361.2. (a) When a court orders removal of a minor pursuant to Section 361, the court shall first determine whether there is a parent of the minor, with whom the minor was not residing at the time that the events or conditions arose that brought the minor within the provisions of Section 300, who desires to assume custody of the minor. If such a parent requests custody the court shall place the minor with the parent unless it finds that placement with that parent would be

detrimental to the minor.

(b) If the court places the minor with such a parent it may do either of the following:

(1) Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the minor. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents.

(2) Order that the parent assume custody subject to the supervision of the juvenile court. In such a case the court may order that reunification services be provided to the parent or guardian from whom the minor is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the minor.

(c) The court shall make a finding either in writing or on the record of the basis for its determination under subdivisions (a) and (b).

(d) When the court orders removal pursuant to Section 361, the court shall order the care, custody, control, and conduct of the minor to be under the supervision of the probation officer who may place the minor in any of the following:

(1) The home of a relative, including a noncustodial parent.

(2) A foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available.

(3) A suitable licensed community care facility.

(4) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(5) A home or facility in accordance with the federal Indian Child Welfare Act.

(6) A child under the age of six years may be placed in a community care facility licensed as a group home for children, or a temporary shelter care facility as defined in Section 1530.8 of the Health and Safety Code, only under any of the following circumstances:

(A) When a case plan indicates that placement is for purposes of providing specialized treatment to the child, the case plan specifies the need for, nature of, and anticipated duration of this treatment, and the facility meets the applicable regulations adopted under Section 1530.8 of the Health and Safety Code and standards developed pursuant to Section 11467.1. The specialized treatment period shall not exceed 120 days, unless additional time is needed

pursuant to the case plan as documented by the caseworker and approved by the caseworker's supervisor.

(B) When a case plan indicates that placement is for purposes of providing family reunification services. In addition, the facility offers family reunification services that meet the needs of the individual child and his or her family, permits parents to have reasonable access to their children 24 hours a day, encourages extensive parental involvement in meeting the daily needs of their children, and employs staff trained to provide family reunification services. In addition, one of the following conditions exists:

(i) The child's parent is also a ward of the court and resides in the facility.

(ii) The child's parent is participating in a treatment program affiliated with the facility and the child's placement in the facility facilitates the coordination and provision of reunification services.

(iii) Placement in the facility is the only alternative that permits the parent to have daily 24-hour access to the child in accordance with the case plan, to participate fully in meeting all of the daily needs of the child, including feeding and personal hygiene, and to have access to necessary reunification services.

(e) (1) If the minor is taken from the physical custody of the minor's parents or guardians and unless the minor is placed with relatives, the minor shall be placed in foster care in the county of residence of the minor's parents or guardians in order to facilitate reunification of the family.

(2) In the event that there are no appropriate placements available in the parents' or guardians' county of residence, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parents' or guardians' community of residence.

(3) Nothing in this section shall be interpreted as requiring multiple disruptions of the minor's placement corresponding to frequent changes of residence by the parents or guardians. In determining whether the minor should be moved, the probation officer will take into consideration the potential harmful effects of disrupting the placement of the minor and the parents' or guardians' reason for the move.

(4) When it has been determined that it is necessary for a minor to be placed in a county other than the minor's parents' or guardians' county of residence, the specific reason the out-of-county placement is necessary shall be documented in the minor's case plan. If the reason the out-of-county placement is necessary is the lack of resources in the sending county to meet the specific needs of the minor, those specific resource needs shall be documented in the case plan.

(5) When it has been determined that a minor is to be placed out-of-county either in a group home or with a foster family agency for subsequent placement in a certified foster family home, and the sending county is to maintain responsibility for supervision and

visitation of the minor, the sending county shall develop a plan of supervision and visitation that specifies the supervision and visitation activities to be performed and specifies that the sending county is responsible for performing those activities. In addition to the plan of supervision and visitation, the sending county shall document information regarding any known or suspected dangerous behavior of the minor that indicates the minor may pose a safety concern in the receiving county. Upon implementation of the Child Welfare Services Case Management System, the plan of supervision and visitation, as well as information regarding any known or suspected dangerous behavior of the minor, shall be made available to the receiving county upon placement of the minor in the receiving county. If placement occurs on a weekend or holiday, the information shall be made available to the receiving county on or before the end of the next business day.

(6) When it has been determined that a minor is to be placed out-of-county and the sending county plans that the receiving county shall be responsible for the supervision and visitation of the minor, the sending county shall develop a formal agreement between the sending and receiving counties. The formal agreement shall specify the supervision and visitation to be provided the minor, and shall specify that the receiving county is responsible for providing the supervision and visitation. The formal agreement shall be approved and signed by the sending and receiving counties prior to placement of the minor in the receiving county. In addition, upon completion of the case plan, the sending county shall provide a copy of the completed case plan to the receiving county. The case plan shall include information regarding any known or suspected dangerous behavior of the minor that indicates the minor may pose a safety concern to the receiving county.

(f) Whenever the probation officer must change the placement of the minor and is unable to find a suitable placement within the county and must place the minor outside the county, the placement shall not be made until he or she has served written notice on the parents or guardians at least 14 days prior to the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. The notice shall state the reasons which require placement outside the county. The parents or guardians may object to the placement not later than seven days after receipt of the notice and, upon objection the court shall hold a hearing not later than five days after the objection and prior to the placement. The court shall order out-of-county placement if it finds that the minor's particular needs require placement outside the county.

(g) Where the court has ordered a minor placed under the supervision of the probation officer and the probation officer has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the minor may be placed in a suitable family home that has filed a license

application with the State Department of Social Services, if all of the following certification conditions are met:

(1) A preplacement home visit is made by the probation officer to determine the suitability of the family home.

(2) The probation officer verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.

(3) The probation officer notifies the licensing agency of the proposed placement and determines that the foster family home applicant has filed specific license application documents prior to and after the placement of the minor. If the license is subsequently denied, the minor shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.

(h) Where the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether the family ties and best interest of the minor will be served by granting visitation rights to the minor's grandparents. The court shall clearly specify those rights to the supervising probation officer.

CHAPTER 462

An act to add Section 14670.15 to the Government Code, and to amend Section 5673 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 14670.15 is added to the Government Code, to read:

14670.15. Notwithstanding Section 14670, the Director of General Services, with the consent of the State Department of Mental Health, may lease to Napa County for a period not to exceed 60 years, 32,632 square feet, on the east of Residence 09, building 225, facing Imola Street between Shurleft and Tejas Street, within the boundaries of Napa State Hospital for the purposes of the pilot program described in Section 5673 of the Welfare and Institutions Code. The lease shall be under terms and conditions determined by the director to be in the best interests of the state, subject to the approval of the State Public Works Board.

SEC. 2. Section 5673 of the Welfare and Institutions Code is amended to read:

5673. (a) A five-year pilot program is hereby authorized in Napa County and Riverside County to establish a 15-bed locked facility in each county, for the provision of community care and treatment for

mentally disordered persons who are placed in a state hospital or another health facility because no community placements are available to meet the needs of these patients. It is the intent of the Legislature to carefully evaluate this specific approach to determine its potential for replication in other limited jurisdictions. Participation in this pilot program by the two counties shall be on a voluntary basis. The pilot program shall be implemented notwithstanding the following licensure requirements enforced by the State Department of Social Services:

(1) Subdivision (a) of Section 1502 of the Health and Safety Code, which defines a community care facility as providing nonmedical care.

(2) Subdivision (a) of Section 1505 of the Health and Safety Code, which exempts any health facility, as defined by Section 1250 of the Health and Safety Code, from licensure under the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code).

(3) Section 1507 of the Health and Safety Code, which limits the provision of medical services in community care facilities to incidental medical services.

(4) Paragraph (5) of subdivision (a) of Section 80001 of Title 22 of the California Code of Regulations, which states that an adult residential facility provides nonmedical care.

(5) Paragraph (7) of subdivision (a) of Section 80072 of Title 22 of the California Code of Regulations, which relates to a client's right not to be locked in any room, building, or facility premises. However, for purposes of this section, a client shall not be locked in any room.

(b) Clients provided care within these pilot facilities shall be conservatees as defined by Section 5350 who, prior to the establishment of this program, either received care at a state hospital or were placed in facilities for the mentally disordered.

(c) Standards for services provided shall be developed by each county mental health director, in consultation with, and approved by, the State Department of Mental Health and monitored regularly by the department for compliance with these standards. These services shall be on a 24-hour basis in a therapeutic homelike environment. The services shall cover the full range of the social rehabilitation model concept, including, but not limited to, the following:

(1) Counseling.

(2) Day treatment.

(3) Crisis intervention.

(4) Vocational training.

(5) Medication evaluation and management by a licensed physician and other licensed professional and paraprofessional staff who possess a valid license or certificate to perform this function.

(d) Administration of medication and monitoring of medication shall occur notwithstanding statutory and regulatory licensure requirements for community care facilities to the contrary.

Standards for use of medications shall be developed and monitored by the State Department of Mental Health.

(e) The facilities shall be licensed and monitored by the State Department of Social Services and shall comply with all licensing requirements except those specifically exempted by this section. In addition, no less than 75 square feet of outdoor space per client shall be made available for client use. The State Department of Social Services shall conduct inspections of the facilities pursuant to Section 1533 of the Health and Safety Code and shall be given immediate access to the facilities.

(f) In staffing the pilot program, each county board of supervisors shall give full consideration to each potential means of implementation, including, but not limited to, the clinical, programmatic, and economic benefits and advantages of each alternative. The pilot program shall meet all of the staffing criteria of subdivision (b) of Section 5670.5. The staff shall use and document the actions of a multidisciplinary professional consultation staff to meet the specific diagnostic and treatment needs of clients. The staff shall include, but need not be limited to, a licensed psychiatrist, a psychologist, a social worker, and a psychiatric technician, or a licensed vocational nurse. One or more of the following licensed professionals shall be present at the facility at all times:

(1) A psychiatrist or psychologist.

(2) A registered psychiatric nurse.

(3) A psychiatric technician.

(g) The State Department of Mental Health shall certify the program content in each county and monitor the program's functions on a regular basis and the State Department of Social Services shall regularly evaluate the facilities in accord with its statutory and regulatory licensure functions, pursuant to subdivisions (d) and (e).

(h) (1) The county mental health directors, the State Department of Mental Health, and the State Department of Social Services shall jointly report to the Legislature within five years of the commencement of operation of the facilities authorized pursuant to this section regarding the progress and cost-effectiveness demonstrated by the pilot program. The reports shall evaluate whether the pilot program is effective based on clinical indicators, and is successful in preventing future placement of its clients in state hospitals or other long-term health facilities, and shall report whether the cost of care in the pilot facilities is less than the cost of care in state hospitals or in other long-term health facility options. The evaluation reports shall include, but not be limited to, an evaluation of the selected method of project staffing, and an analysis of the effectiveness of the pilot program at meeting all of the following objectives:

(A) That the clients placed in the facilities show improved global assessment scores, as measured by preadmission and postadmission tests.

(B) That the clients placed in the facilities demonstrate improved functional behavior as measured by preadmission and postadmission tests.

(C) That the clients placed in the facilities have reduced medication levels as measured by preadmission and postadmission tests.

(2) The reports shall also include information on community reaction concerning locating this type of facility in the general community, any major problems created by the concept of this type of facility, the appropriate type of client to be placed in this type of facility, and the appropriate licensing agency and category of licensure for facilities of this nature.

(i) The pilot program shall be deemed successful if it demonstrates both of the following:

(1) That costs of the program are no greater than public expenditures for providing alternative services to the clients served by the program.

(2) That the benefit to the clients, as described in subdivision (h), is improved by the program.

(j) Commencement of the pilot program in each county pursuant to this section shall be contingent upon the county and the department identifying funds for this purpose, as described in a financial plan that is approved in advance by the Department of Finance.

CHAPTER 463

An act to amend and repeal Section 1569.72 of the Health and Safety Code, relating to residential care for the elderly.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 1569.72 of the Health and Safety Code, as added by Chapter 1137 of the Statutes of 1990 and amended by Section 1 of Chapter 247 of the Statutes of 1993, is amended to read:

1569.72. (a) Except as otherwise provided in subdivision (d), no resident shall be admitted or retained in a residential care facility for the elderly if any of the following apply:

(1) The resident requires 24-hour, skilled nursing or intermediate care.

(2) The resident is bedridden, other than for a temporary illness or for recovery from surgery.

(b) For the purposes of this section, "bedridden" means either of the following:

(1) A resident who requires assistance in turning and

repositioning in bed and is unable to leave a building unassisted under emergency conditions.

(2) A resident who is unable to independently transfer to and from bed, except in facilities with appropriate and sufficient care staff, mechanical devices if necessary, and safety precautions, as determined by the director in regulations.

(c) For purposes of this section, "temporary illness" means any illness which persists for 14 days or less.

(d) A bedridden resident may be retained in a residential care facility for the elderly in excess of 14 days if all of the following requirements are satisfied:

(1) The facility notifies the department in writing regarding the temporary illness or recovery from surgery.

(2) The facility submits to the department, with the notification, a physician and surgeon's written statement to the effect that the resident's illness or recovery is of a temporary nature. The statement shall contain an estimated date upon which the illness or recovery will end or upon which the resident will no longer be confined to a bed.

(3) The department determines that the health and safety of the resident is adequately protected in that facility and that transfer to a higher level of care is not necessary.

(4) This section does not expand the scope of care and supervision of a residential care facility for the elderly.

(e) Notwithstanding the length of stay of a bedridden resident, every facility admitting or retaining a bedridden resident, as defined in this section, shall, within 48 hours of the resident's admission or retention in the facility, notify the local fire authority with jurisdiction in the bedridden resident's location of the estimated length of time the resident will retain his or her bedridden status in the facility.

(f) Nothing in this section shall be used for purposes of Section 1569.70 to determine the appropriateness of residents being admitted or retained in a residential care facility for the elderly on the basis of health related conditions and the need for these services until the three levels of care set forth in Section 1569.70 are fully implemented. This section shall not prohibit the Community Care Licensing Division of the State Department of Social Services from continuing to implement the regulations of Article 8 (commencing with Section 87700) of Chapter 8 of Division 6 of Title 22 of the California Code of Regulations, as promulgated and approved on February 13, 1990.

SEC. 2. Section 1569.72 of the Health and Safety Code as amended by Section 2 of Chapter 247 of the Statutes of 1993 is repealed.

CHAPTER 464

An act to amend Section 51.3 of the Civil Code, relating to civil rights.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 51.3 of the Civil Code is amended to read:

51.3. (a) The Legislature finds and declares that this section is essential to establish and preserve specially designed accessible housing for senior citizens. There are senior citizens who need special living environments and services, and find that there is an inadequate supply of this type of housing in the state.

(b) The Legislature finds and declares that different age limitations for senior citizen housing are appropriate in recognition of the size of a development in relationship to the community in which it is located.

(c) For the purposes of this section, the following definitions apply:

(1) "Qualifying resident" or "senior citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) "Qualified permanent resident" means a person who meets all of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(C) Has an ownership interest in, or is in expectation of an ownership interest in, the dwelling unit within the housing development that limits occupancy, residency, or use on the basis of age.

(3) "Senior citizen housing development" means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that meets any of the following requirements:

(A) At least 150 dwelling units in a metropolitan statistical area, as defined by the Federal Committee on Metropolitan Statistical Areas, with a population of at least 1,000 residents per square mile or 1,000,000 total residents, based on the 1990 census.

(B) At least 100 dwelling units in a metropolitan statistical area, as defined by the Federal Committee on Metropolitan Statistical Areas, with a population not to exceed 999 residents per square mile

and not to exceed 399,999 total residents, based on the 1990 census.

(C) At least 35 dwelling units in any other area.

The number of dwelling units within a development includes all dwelling units developed, whether in single or multiple phases. Developments commenced after July 1, 1986, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code.

(4) "Dwelling unit" or "housing" means any residential accommodation other than a mobilehome.

(5) "Cohabitant" refers to persons who live together as husband and wife.

(6) "Permitted health care resident" means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident.

(d) The covenants, conditions, and restrictions or other documents or written policy shall not limit occupancy, residency, or use on the basis of age more proscriptively than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident.

(e) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 45 years of age for periods of time, not less than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(f) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident.

(g) The condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential rental property shall have been developed for, and initially been put to use as, housing for senior citizens, or shall have been substantially rehabilitated or renovated for, and immediately afterward put to use as, housing for senior citizens, as provided in this section.

(h) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(i) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section.

(j) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation.

CHAPTER 465

An act to amend Section 830.5 of the Penal Code, relating to peace officers.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 830.5 of the Penal Code is amended to read:

830.5. The following persons are peace officers whose authority extends to any place in the state while engaged in the performance of the duties of their respective employment and for the purpose of carrying out the primary function of their employment or as required under Sections 8597, 8598, and 8617 of the Government Code. Except as specified in this section, these peace officers may carry firearms only if authorized and under those terms and conditions specified by their employing agency:

(a) A parole officer of the Department of Corrections or the Department of the Youth Authority, probation officer, deputy probation officer, or a board coordinating parole agent employed by the Youthful Offender Parole Board. Except as otherwise provided in this subdivision, the authority of these parole or probation officers shall extend only as follows:

(1) To conditions of parole or of probation by any person in this state on parole or probation.

(2) To the escape of any inmate or ward from a state or local institution.

(3) To the transportation of persons on parole or probation.

(4) To violations of any penal provisions of law which are discovered while performing the usual or authorized duties of his or her employment.

(5) To the rendering of mutual aid to any other law enforcement agency.

For the purposes of this subdivision, "parole agent" shall have the same meaning as parole officer of the Department of Corrections or of the Department of the Youth Authority.

Any parole officer of the Department of Corrections, the Department of the Youth Authority, or the Youthful Offender Parole Board is authorized to carry firearms, but only as determined by the

director on a case-by-case or unit-by-unit basis and only under those terms and conditions specified by the director or chairperson. The Department of the Youth Authority shall develop a policy for arming peace officers of the Department of the Youth Authority who comprise "high-risk transportation details" or "high-risk escape details" no later than June 30, 1995. This policy shall be implemented no later than December 31, 1995.

The Department of the Youth Authority shall train and arm those peace officers who comprise tactical teams at each facility for use during "high-risk escape details."

(b) A correctional officer employed by the Department of Corrections or any employee of the Department of the Youth Authority having custody of wards or any employee of the Department of Corrections designated by the Director of Corrections or any medical technical assistant series employee designated by the Director of Corrections or designated by the Director of Corrections and employed by the State Department of Mental Health to work in the California Medical Facility or employee of the Board of Prison Terms designated by the Secretary of the Youth and Adult Correctional Agency or employee of the Department of the Youth Authority designated by the Director of the Youth Authority or any superintendent, supervisor, or employee having custodial responsibilities in an institution operated by a probation department, or any transportation officer of a probation department.

(c) The following persons may carry a firearm while not on duty: a parole officer of the Department of Corrections or the Department of the Youth Authority, a correctional officer employed by the Department of Corrections or any employee of the Department of the Youth Authority having custody of wards or any employee of the Department of Corrections designated by the Director of Corrections. A parole officer of the Youthful Offender Parole Board may carry a firearm while not on duty only when so authorized by the chairperson of the board and only under the terms and conditions specified by the chairperson. Nothing in this section shall be interpreted to require licensure pursuant to Section 12025. The director or chairperson may deny, suspend, or revoke for good cause a person's right to carry a firearm under this subdivision. That person shall, upon request, receive a hearing, as provided for in the negotiated grievance procedure between the exclusive employee representative and the Department of Corrections, the Department of the Youth Authority, or the Youthful Offender Parole Board, to review the director's or the chairperson's decision.

(d) Persons permitted to carry firearms pursuant to this section, either on or off duty, shall meet the training requirements of Section 832 and shall qualify with the firearm at least quarterly. It is the responsibility of the individual officer or designee to maintain his or her eligibility to carry concealable firearms off duty. Failure to maintain quarterly qualifications by an officer or designee with any

concealable firearms carried off duty shall constitute good cause to suspend or revoke that person's right to carry firearms off duty.

(e) The Department of Corrections shall allow reasonable access to its ranges for officers and designees of either department to qualify to carry concealable firearms off duty. The time spent on the range for purposes of meeting the qualification requirements shall be the person's own time during the person's off-duty hours.

(f) The Director of Corrections shall promulgate regulations consistent with this section.

(g) "High-risk transportation details" and "high-risk escape details" as used in this section shall be determined by the Director of the Youth Authority, or his or her designee. The director, or his or her designee, shall consider at least the following in determining "high-risk transportation details" and "high-risk escape details": protection of the public, protection of officers, flight risk, and violence potential of the wards.

(h) "Transportation detail" as used in this section shall include transportation of wards outside the facility, including, but not limited to, court appearances, medical trips, and interfacility transfers.

CHAPTER 466

An act to amend Section 4062 of, and to repeal and add Section 4063 of, the Family Code, relating to family law.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 4062 of the Family Code is amended to read:

4062. (a) The court shall order the following as additional child support:

(1) Child care costs related to employment or to reasonably necessary education or training for employment skills.

(2) The reasonable uninsured health care costs for the children as provided in Section 4063.

(b) The court may order the following as additional child support:

(1) Costs related to the educational or other special needs of the children.

(2) Travel expenses for visitation.

SEC. 2. Section 4063 of the Family Code is repealed.

SEC. 3. Section 4063 is added to the Family Code, to read:

4063. (a) When making an order pursuant to paragraph (2) of subdivision (a) of Section 4062, the court shall:

(1) Advise each parent, in writing or on the record, of his or her rights and liabilities, including financial responsibilities.

(2) Include in its order the time period for a parent to reimburse

the other parent for the reimbursing parent's share of the reasonable additional child support costs subject to the requirements of this section.

(b) Unless there has been an assignment of rights pursuant to Section 11477 of the Welfare and Institutions Code, when either parent accrues or pays costs pursuant to an order under this section, that parent shall provide the other parent with an itemized statement of the costs within a reasonable time, but not more than 30 days after accruing the costs. These costs shall then be paid as follows:

(1) If a parent has already paid all of these costs, that parent shall provide proof of payment and a request for reimbursement of his or her court-ordered share to the other parent.

(2) If a parent has paid his or her court-ordered share of the costs only, that parent shall provide proof of payment to the other parent, request the other parent to pay the remainder of the costs directly to the provider, and provide the reimbursing parent with any necessary information about how to make the payment to the provider.

(3) The other parent shall make the reimbursement or pay the remaining costs within the time period specified by the court, or, if no period is specified, within a reasonable time not to exceed 30 days from notification of the amount due, or according to any payment schedule set by the health care provider for either parent unless the parties agree in writing to another payment schedule or the court finds good cause for setting another payment schedule.

(4) If the reimbursing parent disputes a request for payment, that parent shall pay the requested amount and thereafter may seek judicial relief under this section and Section 290. If the reimbursing parent fails to pay the other parent as required by this subdivision, the other parent may seek judicial relief under this section and Section 290.

(c) Either parent may file a noticed motion to enforce an order issued pursuant to this section. In addition to the court's powers under Section 290, the court may award filing costs and reasonable attorney's fees if it finds that either party acted without reasonable cause regarding his or her obligations pursuant to this section.

(d) There is a rebuttable presumption that the costs actually paid for the uninsured health care needs of the children are reasonable, except as provided in subdivision (e).

(e) Except as provided in subdivision (g):

(1) The health care insurance coverage, including, but not limited to, coverage for emergency treatment, provided by a parent pursuant to a court order, shall be the coverage to be utilized at all times, consistent with the requirements of that coverage, unless the other parent can show that the health care insurance coverage is inadequate to meet the child's needs.

(2) If either parent obtains health care insurance coverage in addition to that provided pursuant to the court order, that parent

shall bear sole financial responsibility for the costs of that additional coverage and the costs of any care or treatment obtained pursuant thereto in excess of the costs that would have been incurred under the health care insurance coverage provided for in the court order.

(f) Except as provided in subdivision (g):

(1) If the health care insurance coverage provided by a parent pursuant to a court order designates a preferred health care provider, that preferred provider shall be used at all times, consistent with the terms and requirements of that coverage.

(2) If either parent uses a health care provider other than the preferred provider inconsistent with the terms and requirements of the court-ordered health care insurance coverage, the parent obtaining that care shall bear the sole responsibility for any nonreimbursable health care costs in excess of the costs that would have been incurred under the court-ordered health care insurance coverage had the preferred provider been used.

(g) When ruling on a motion made pursuant to this section, in order to ensure that the health care needs of the child under this section are met, the court shall consider all relevant facts, including, but not limited to, the following:

(1) The geographic access and reasonable availability of necessary health care for the child which complies with the terms of the health care insurance coverage paid for by either parent pursuant to a court order.

(2) The necessity of emergency medical treatment that may have precluded the use of the health care insurance, or the preferred health care provider required under the insurance, provided by either parent pursuant to a court order.

(3) The special medical needs of the child.

(4) The reasonable inability of a parent to pay the full amount of reimbursement within a 30-day period and the resulting necessity for a court-ordered payment schedule.

CHAPTER 467

An act to amend Section 1011 of the Code of Civil Procedure, relating to civil procedure.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 1011 of the Code of Civil Procedure is amended to read:

1011. The service may be personal, by delivery to the party or attorney on whom the service is required to be made, or it may be as follows:

(a) If upon an attorney, service may be made at the attorney's office, by leaving the notice or other papers in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or with a person having charge thereof. When there is no person in the office with whom the notice or papers may be left for purposes of this subdivision at the time service is to be effected, service may be made by leaving them between the hours of nine in the morning and five in the afternoon, in a conspicuous place in the office, or, if the attorney's office is not open so as to admit of that service, then service may be made by leaving the notice or papers at the attorney's residence, with some person of not less than 18 years of age, if the attorney's residence is in the same county with his or her office, and, if the attorney's residence is not known or is not in the same county with his or her office, or being in the same county it is not open, or there is not found thereat any person of not less than 18 years of age, then service may be made by putting the notice or papers, enclosed in a sealed envelope, into the post office or a mail box, subpost office, substation, or mail chute or other like facility regularly maintained by the Government of the United States directed to the attorney at his or her office, if known and otherwise to the attorney's residence, if known. If neither the attorney's office nor residence is known, service may be made by delivering the notice or papers to the address of the attorney or party of record as designated on the court papers, or by delivering the notice or papers to the clerk of the court, or to the judge where there is no clerk, for the attorney.

(b) If upon a party, service shall be made in the manner specifically provided in particular cases, or, if no specific provision is made, service may be made by leaving the notice or other paper at the party's residence, between the hours of eight in the morning and six in the evening, with some person of not less than 18 years of age. If at the time of attempted service between those hours a person 18 years of age or older cannot be found at the party's residence, the notice or papers may be served by mail. If the party's residence is not known, then service may be made by delivering the notice or papers to the clerk of the court or the judge, if there is no clerk, for that party.

CHAPTER 468

An act to amend Section 801 of the Business and Professions Code, relating to dentists.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 801 of the Business and Professions Code is amended to read:

801. (a) Every insurer providing professional liability insurance to a person who holds a license, certificate or similar authority from or under any agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200), Chapter 4 (commencing with Section 1600), or Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act) shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act shall send a complete report to the Board of Medical Quality Assurance or the Osteopathic Medical Board of California, as appropriate, as to any settlement or arbitration award over thirty thousand dollars ($30,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Board of Dental Examiners of California as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) Notwithstanding any other provision of law, no insurer shall enter into such a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer. This section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971.

CHAPTER 469

An act to amend Sections 306 and 319 of the Welfare and Institutions Code, relating to child custody.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 306 of the Welfare and Institutions Code is amended to read:

306. (a) Any social worker in a county welfare department, while acting within the scope of his or her regular duties under the direction of the juvenile court and pursuant to subdivision (b) of Section 272, may do all of the following:

(1) Receive and maintain, pending investigation, temporary custody of a minor who is described in Section 300, and who has been delivered by a peace officer.

(2) Take into and maintain temporary custody of, without a warrant, a minor who has been declared a dependent child of the juvenile court under Section 300 or who the social worker has reasonable cause to believe is a person described in subdivision (b) or (g) of Section 300, and the social worker has reasonable cause to believe that the minor has an immediate need for medical care or is in immediate danger of physical or sexual abuse or the physical environment poses an immediate threat to the child's health or safety.

(b) Before taking a minor into custody, a social worker shall

consider whether the child can remain safely in his or her residence. The consideration of whether the child can remain safely at home shall include, but not be limited to, the following factors:

(1) Whether there are any reasonable services available to the worker which, if provided to the minor's parent, guardian, caretaker, or to the minor, would eliminate the need to remove the minor from the custody of his or her parent, guardian, or caretaker.

(2) Whether a referral to public assistance pursuant to Chapter 2 (commencing with Section 11200) of Part 3, Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6, of Division 9 would eliminate the need to take temporary custody of the minor. If those services are available they shall be utilized.

(3) Whether a nonoffending caretaker can provide for and protect the child from abuse and neglect and whether the alleged perpetrator voluntarily agrees to withdraw from the residence, withdraws from the residence, and is likely to remain withdrawn from the residence.

SEC. 2. Section 319 of the Welfare and Institutions Code is amended to read:

319. At the initial petition hearing the court shall examine the minor's parents, guardians, or other persons having relevant knowledge and hear the relevant evidence as the minor, the minor's parents or guardians, the petitioner, or their counsel desires to present. The court may examine the minor, as provided in Section 350.

The probation officer shall report to the court on the reasons why the minor has been removed from the parent's custody; the need, if any, for continued detention; on the available services and the referral methods to those services which could facilitate the return of the minor to the custody of the minor's parents or guardians; and whether there are any relatives who are able and willing to take temporary custody of the minor. The court shall order the release of the minor from custody unless a prima facie showing has been made that the minor comes within Section 300 and any of the following circumstances exist:

(a) There is a substantial danger to the physical health of the minor or the minor is suffering severe emotional damage, and there are no reasonable means by which the minor's physical or emotional health may be protected without removing the minor from the parents' or guardians' physical custody.

(b) There is substantial evidence that a parent, guardian, or custodian of the minor is likely to flee the jurisdiction of the court.

(c) The minor has left a placement in which he or she was placed by the juvenile court.

(d) The minor indicates an unwillingness to return home, if the minor has been physically or sexually abused by a person residing in the home.

The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the minor from his or her home, pursuant to subdivision (b) of Section 306, and whether there are available services which would prevent the need for further detention. Services to be considered for purposes of making this determination are case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training, transportation, and any other child welfare services authorized by the State Department of Social Services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9. The court shall also review whether the social worker has considered whether a referral to public assistance services pursuant to Chapter 2 (commencing with Section 11200) of Part 3, Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6, of Division 9 would have eliminated the need to take temporary custody of the minor or would prevent the need for further detention. If the minor can be returned to the custody of his or her parent or guardian through the provision of those services, the court shall place the minor with his or her parent or guardian and order that the services shall be provided. If the minor cannot be returned to the custody of his or her parent or guardian, the court shall determine if there is a relative who is able and willing to care for the child. Where the first contact with the family has occurred during an emergency situation in which the child could not safely remain at home, even with reasonable services being provided, the court shall make a finding that the lack of preplacement preventive efforts were reasonable. Whenever a court orders a minor detained, the court shall state the facts on which the decision is based, shall specify why the initial removal was necessary, and shall order services to be provided as soon as possible to reunify the minor and his or her family if appropriate.

When the minor is not released from custody the court may order that the minor shall be placed in the suitable home of a relative or in an emergency shelter or other suitable licensed place or a place exempt from licensure designated by the juvenile court or in an appropriate certified family home whose license is pending and all the prelicense requirements for such a placement have been met as set forth in subdivision (e) of Section 361.2 for a period not to exceed 15 judicial days.

As used in this section, "relative" means an adult who is related to the minor by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great," or "grand." However, only the following relatives shall be given preferential treatment for placement of the minor: an adult who is a grandparent, aunt, uncle, or a sibling of the minor.

SEC. 3. No reimbursement is required by this act pursuant to

Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs. However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 470

An act to amend Section 5275 of the Labor Code, relating to workers' compensation.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 5275 of the Labor Code is amended to read:

5275. (a) Disputes involving the following issues shall be submitted for arbitration:

(1) Insurance coverage.

(2) Right of contribution in accordance with Section 5500.5.

(3) Permanent disability, where an informal rating has indicated that the permanent disability will be 15 percent standard or less, and the presiding judge determines that the case will not be set for hearing within 110 calendar days from the date of the filing of the declaration of readiness.

(4) Permanent disability, where an informal rating has indicated that the permanent disability will be 20 percent standard or less, and the presiding judge determines that the case will not be set for hearing within 150 calendar days from the date of the filing of the declaration of readiness.

(5) Requests for rehabilitation unit dispute resolution if the administrative director determines that the matter will not be set for conference within 90 calendar days from the date of the filing of the request.

(6) Appeals from decisions and orders of the vocational rehabilitation unit if the presiding judge determines that the appeal will not be set for hearing within 120 calendar days from the date of

the filing of the appeal.

(b) Paragraphs (3) and (4) of subdivision (a) shall not be applicable if the applicant has requested and received a continuance or delay in the time periods for proceedings set forth in Section 5502.

(c) Paragraphs (3) and (4) of subdivision (a) shall become operative on January 1, 1991, and paragraphs (5) and (6) of subdivision (a) shall become operative January 1, 1994, regardless of the date of injury.

(d) By agreement of the parties, any issue arising under Division 1 (commencing with Section 50) or Division 4 (commencing with Section 3200) may be submitted for arbitration, regardless of the date of injury.

CHAPTER 471

An act to amend Section 1596.877 of the Health and Safety Code, relating to child day care facilities.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 1596.877 of the Health and Safety Code is amended to read:

1596.877. (a) Prior to granting a license to, or otherwise approving, any family day care home, the department shall check the child abuse and neglect complaint records of the child protective services agency of the county in which the applicant has resided for the two years preceding the application.

(b) Prior to granting a license to, or otherwise approving, any individual to care for children, or to reside in a child day care facility, the department shall check the Child Abuse Registry pursuant to paragraph (3) of subdivision (b) of Section 11170 of the Penal Code for the applicant or for any other individual for whom a criminal record clearance is required by subdivision (b) of Section 1596.871.

(c) The department shall investigate any reports received from the Child Abuse Registry and investigate any information received from the county child protective services agency. However, child protective services agency information arising from a report designated as "unfounded," as defined pursuant to subdivision (a) of Section 11165.12 of the Penal Code, shall not be included in the investigation. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective services agency that investigated the child abuse report. The department shall not deny a license based upon a report from the Child Abuse Registry or based on child abuse and neglect complaint records of the county child protective services agency

unless child abuse is substantiated.

(d) On and after January 1, 1993, the department may implement subdivision (a) for records maintained by those counties that have automated their child abuse and neglect complaint records. On and after January 1, 1996, the department shall implement subdivision (a) for records maintained by all counties.

CHAPTER 472

An act to amend Section 2942 of, and to add Sections 1003.5 and 15660.5 to, the Probate Code, relating to public administrators.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 1003.5 is added to the Probate Code, to read:

1003.5. The public guardian shall not be appointed as a guardian ad litem pursuant to Section 1003 unless the court, after reasonable notice and inquiry, finds that no other qualified person is willing to act as a guardian ad litem.

SEC. 2. Section 2942 of the Probate Code is amended to read:

2942. The public guardian shall be paid from the estate of the ward or conservatee for all of the following:

(a) Reasonable expenses incurred in the execution of the guardianship or conservatorship.

(b) Compensation for services of the public guardian and the attorney of the public guardian, and for the filing and processing services of the county clerk, in the amount the court determines is just and reasonable.

(c) An annual bond fee in the amount of twenty-five dollars ($25) plus one-fourth of 1 percent of the amount of an estate greater than ten thousand dollars ($10,000). The amount charged shall be deposited in the county treasury. This subdivision does not apply if the ward or conservatee is eligible for Social Security Supplemental Income benefits.

SEC. 3. Section 15660.5 is added to the Probate Code, to read:

15660.5. The public guardian shall not be appointed as a trustee of any trust pursuant to subdivision (d) of Section 15660, unless the court finds, based on reasonable inquiry, that no other qualified person is willing to act as trustee.

CHAPTER 473

An act to amend Sections 13127, 13128, and 13129 of the Health and Safety Code, relating to fire protection.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. (a) The Legislature hereby finds and declares all of the following:

(1) The State Fire Marshal promulgates a list of the flame-retardant chemicals, flame-retardant fabrics or materials, and flame-retardant application concerns approved by the State Fire Marshal and is responsible for issuing licenses to those concerns approved by the State Fire Marshal who engage in the business of or perform for a fee the act of applying a flame-retardant compound or chemical to textiles or nontextile decorative items.

(2) The State Fire Marshal issues a general license to general applicators who apply flame-retardant compounds or chemicals to textiles and a limited license to limited applicators who apply flame-retardant compounds or textiles to nontextile decorative items, such as Christmas trees.

(3) The license issued to limited applicators is usually for seasonal work.

(4) There is only one licensing renewal period for both general and limited applicators.

(5) Since most limited applicators work seasonally, they cannot provide the State Fire Marshal with the correct information required in the application for license renewal by the May 1 renewal deadline. Consequently, many limited applicators either give incorrect worksite addresses to renew their licenses on time or renew their licenses late and incur penalty fees.

(b) Therefore, it is the intent of the Legislature to create a separate registration period for limited applicators.

SEC. 2. Section 13127 of the Health and Safety Code is amended to read:

13127. (a) Any chemical manufacturing concern, or any flame-retardant application concern, or any concern marketing a flame-retardant fabric or material who desires to have its name appear on the approved list shall first make application to the State Fire Marshal on forms provided by the State Fire Marshal.

(b) For purposes of this section, Sections 13128 and 13129:

(1) "General applicator" means a concern that engages in the business of or performs for a fee the application of a flame-retardant compound or chemical to any textile including decorative materials.

(2) "Limited applicator" means a concern that engages in the business of or performs for a fee the application of a flame-retardant

compound or chemical to nontextile decorative items, including Christmas trees.

(c) (1) The annual registration fee renewal period for general applicators shall begin on January 1 and end on May 1 preceding the registration year for which the renewal is requested. A penalty of 50 percent of the listing fee shall be assessed in all cases where the renewal fees are not paid on or before May 1, preceding the registration year for which renewal is requested.

(2) The annual registration fee renewal period for limited applicators shall begin September 15 and end on October 31 preceding the registration year for which the renewal is requested. A penalty of 50 percent of the listing fee shall be assessed in all cases where the fees are not paid on or before October 31, preceding the registration year for which renewal is requested.

(d) All applications shall be accompanied by a registration fee established by the State Fire Marshal. The registration fee shall not exceed the amount necessary to cover the costs incurred by the State Fire Marshal in carrying out Sections 13120 to 13126, inclusive.

SEC. 3. Section 13128 of the Health and Safety Code is amended to read:

13128. (a) The annual and renewal registration fee period for general applicators shall be for the fiscal year period from July 1 to June 30 or for the remaining portion thereof.

(b) The annual and renewal registration fee period for limited applicators shall be for the fiscal year period from November 1 to October 31 or for the remaining portion thereof.

SEC. 4. Section 13129 of the Health and Safety Code is amended to read:

13129. (a) The State Fire Marshal shall remove from the approved list the names of all chemicals, chemically treated fabrics or materials and the names of all flame-retardant general applicator concerns that have not paid their renewal registration fee prior to May 1 of each year.

(b) The State Fire Marshal shall remove from the approved list the names of all flame-retardant limited applicator concerns that have not paid their renewal registration fee prior to October 31 of each year.

CHAPTER 474

An act to amend Sections 4980.40, 4986.20, 4996.2 of, and to add Section 4992.36 to, the Business and Professions Code, relating to healing arts.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 4980.40 of the Business and Professions Code is amended to read:

4980.40. To qualify for a license an applicant shall have all the following qualifications:

(a) Applicants applying for licensure on or after January 1, 1988, shall possess a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, counseling with an emphasis in marriage, family, and child counseling, or social work with an emphasis in clinical social work, obtained from a school, college, or university accredited by the Western Association of Schools and Colleges, the Northwest Association of Secondary and Higher Schools, or an essentially equivalent accrediting agency, as determined by the board, or approved by the Council for Private Postsecondary and Vocational Education, pursuant to subdivision (d) of Section 94310 of the Education Code. For purposes of this chapter, the term "approved by the Council for Private Postsecondary and Vocational Education" shall not include temporary, conditional, or any other type of interim approval. In order to qualify for licensure pursuant to this subdivision, any doctor's or master's degree program shall contain no less than 48 semester or 72 quarter units of instruction. The instruction shall include no less than 12 semester units or 18 quarter units of coursework in the areas of marriage, family, and child counseling, and marital and family systems approaches to treatment.

The coursework shall include all of the following areas:

(1) The salient theories of a variety of psychotherapeutic orientations directly related to marriage, family, and child counseling, and marital and family systems approaches to treatment.

(2) Theories of marriage and family therapy and how they can be utilized in order to intervene therapeutically with couples, families, adults, children, and groups.

(3) Developmental issues and life events from infancy to old age and their effect upon individuals, couples, and family relationships. This may include coursework that focuses on specific family life events and the psychological, psychotherapeutic, and health implications that arise within couples and families, including, but not limited to, childbirth, child rearing, childhood, adolescence,

adulthood, marriage, divorce, blended families, stepparenting, and geropsychology.

(4) A variety of approaches to the treatment of children.

The board may, by regulation, further define the content requirements of required courses specified in this subdivision.

(b) (1) In addition to the 12 semester or 18 quarter units of coursework specified above, the doctor's or master's degree program shall contain not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic techniques, assessment, diagnosis, prognosis, and treatment of premarital, couple, family, and child relationships, including dysfunctions, healthy functioning, health promotion, and illness prevention, in a supervised clinical placement that provides supervised fieldwork experience within the scope of practice of a marriage, family, and child counselor.

(2) On and after January 1, 1995, the practicum shall include a minimum of 150 hours of face-to-face experience counseling individuals, couples, families, or groups.

(3) (A) Supervised practicum hours, as specified in this subdivision, shall be evaluated, accepted, and credited as hours for trainee experience by the board.

(B) The practicum hours shall be considered as part of the 48 semester or 72 quarter unit requirement.

(c) As an alternative to meeting the qualifications specified in subdivision (a), the board shall accept as equivalent degrees, those master's or doctor's degrees granted by educational institutions whose degree program is approved by the Commission on Accreditation for Marriage and Family Therapy Education.

(d) All applicants shall, in addition, complete the coursework or training specified in Section 4980.41.

(e) All applicants shall be at least 18 years of age.

(f) All applicants shall have at least two years' experience that meets the requirements of this chapter in interpersonal relationships, marriage, family, and child counseling and psychotherapy under the supervision of a licensed marriage, family, and child counselor, licensed clinical social worker, licensed psychologist, or a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology. Experience shall not be gained under the supervision of an individual who has provided therapeutic services to that applicant. For those supervisorial relationships in effect on or before December 31, 1988, and which remain in continuous effect thereafter, experience may be gained under the supervision of a licensed physician who has completed a residency in psychiatry.

(g) The applicant shall pass a written examination and an oral examination conducted by the board or its designees.

(h) The applicant shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has

been convicted of any crime in the United States that involves sexual abuse of children or who has been ordered to register as a mentally disordered sex offender or the equivalent in another state or territory.

(i) Applicants applying for licensure on or before December 31, 1987, shall possess all of the qualifications specified in subdivisions (e) to (h), inclusive, and shall possess a doctor's or master's degree in marriage, family, and child counseling, social work, clinical psychology, counseling, counseling psychology, child development and family studies, or a degree determined by the board to be equivalent, obtained from a school, college, or university accredited by the Western Association of Schools and Colleges, the Northwest Association of Secondary and Higher Schools, or an essentially equivalent accrediting agency as determined by the board.

(j) For applicants applying for a license pursuant to subdivision (i), the board may make a determination that an applicant's master's or doctor's degree is an equivalent degree if it finds that the degree was issued upon completion of a course of academic study primarily designed to train persons as a marriage, family, and child counselor. The course of study completed by the applicant shall contain not less than 30 semester or 45 quarter units of coursework as follows: (1) human biological, psychological, and social development, (2) human sexuality, (3) psychopathology, (4) cross-cultural mores and values, (5) theories of marriage, family, and child counseling, (6) professional ethics and law, (7) human communication, (8) research methodology, (9) theories and applications of psychological testing, and (10) not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic techniques, assessment, diagnosis, prognosis, and treatment of premarital, family, and child relationship dysfunctions. The applicant shall submit to the board satisfactory written verification by the chief academic officer of the accredited or approved school, or by an authorized designee, that the applicant has successfully completed courses, including the practicum required by the board. The verification shall include, but need not be limited to, descriptions of the completed courses. The board may request further written verification of course content and academic experience to determine that the applicant's training and experience is equivalent to the course of instruction required by this section.

(k) (1) An applicant applying for intern registration who, prior to December 31, 1987, met the qualifications for registration, but who failed to apply or qualify for intern registration may be granted an intern registration if the applicant meets all of the following criteria:

(A) The applicant possesses a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, counseling with an emphasis in marriage, family, and child counseling, or social work with an emphasis in clinical social work obtained from a school, college, or university currently conferring that degree that, at the

time the degree was conferred, was accredited by the Western Association of Schools and Colleges, and where the degree conferred was, at the time it was conferred, specifically intended to satisfy the educational requirements for licensure by the Board of Behavioral Science Examiners.

(B) The applicant's degree and the course content of the instruction underlying that degree have been evaluated by the chief academic officer of a school, college, or university accredited by the Western Association of Schools and Colleges to determine the extent to which the applicant's degree program satisfies the current educational requirements for licensure, and the chief academic officer certifies to the board the amount and type of instruction needed to meet the current requirements.

(C) The applicant completes a plan of instruction that has been approved by the board at a school, college, or university accredited by the Western Association of Schools and Colleges that the chief academic officer of the educational institution has, pursuant to subparagraph (B), certified will meet the current educational requirements when considered in conjunction with the original degree.

(2) A person applying under this subdivision shall be considered a trainee, as that term is defined in Section 4980.03, once he or she is enrolled to complete the additional coursework necessary to meet the current educational requirements for licensure.

SEC. 2. Section 4986.20 of the Business and Professions Code is amended to read:

4986.20. A person who desires a license under this article shall meet all of the following qualifications:

(a) He or she shall possess at least a master's degree in psychology, educational psychology, school psychology, or counseling and guidance, or a degree deemed equivalent by the board under regulations duly adopted under this article. Such degree or training shall be obtained from educational institutions approved by the board according to the regulations duly adopted under this article.

(b) He or she shall be at least 18 years of age.

(c) He or she shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of any crime in the United States that involves sexual abuse of children or who has been ordered to register as a mentally disordered sex offender or the equivalent in another state or territory.

(d) He or she shall have successfully completed 60 semester hours of postgraduate work devoted to pupil personnel services or have experience deemed equivalent by the board in regulations duly adopted under this chapter.

(e) He or she shall furnish proof of three years of full-time experience as a credentialed school psychologist in the public schools or experience which the board deems equivalent. If the applicant

provides proof of having completed one year's internship working full time as a school psychologist intern in the public schools in an accredited internship program, one year's experience shall be credited toward this requirement.

(f) He or she shall furnish written statements from two sponsors having personal knowledge of his or her professional competence. These statements shall include a description of the applicant's functioning and evaluation of his or her professional competencies. The sponsor of this applicant shall be qualified to be a licensed educational psychologist under this article.

(g) He or she shall be examined by the board with respect to the professional functions authorized by this article.

(h) He or she shall have at least one year of supervised professional experience in an accredited school psychology program, or under the direction of a licensed psychologist, or such suitable alternative experience as determined by the board in regulations duly adopted under this chapter.

SEC. 3. Section 4992.36 is added to the Business and Professions Code, immediately following Section 4992.35, to read:

4992.36. The board may deny any application, or may suspend or revoke any license or registration issued under this chapter, for any of the following:

(a) The revocation, suspension, or other disciplinary action imposed by another state on a license, certificate, or registration issued by that state to practice as a clinical social worker issued by that state to a licensee, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee or registrant in this state. A certified copy of the decision or judgment of the other state shall be conclusive evidence of that action.

(b) The revocation, suspension, or other disciplinary action by the Board of Psychology, or equivalent action in another state, of a license or certificate to practice psychology issued by this state or another state to a licensee or registrant, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee or registrant under this chapter.

(c) The revocation, suspension, or other discipline by the board of a license or certificate to practice marriage counseling or marriage, family, and child counseling, or educational psychology to a licensee shall also constitute grounds for disciplinary action for unprofessional conduct against such licensee or registrant under this chapter.

SEC. 4. Section 4996.2 of the Business and Professions Code is amended to read:

4996.2. Each applicant shall furnish evidence satisfactory to the board that he or she complies with all of the following requirements:

(a) Is at least 21 years of age.

(b) Has received a master's degree from an accredited school of social work.

(c) Has had two years of supervised post-masters degree experience, as specified in Section 4996.20.

(d) Has not committed any crimes or acts constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of any crime in the United States that involves sexual abuse of children or who has been ordered to register as a mentally disordered sex offender or the equivalent in another state or territory.

(e) Has completed adequate instruction and training in the subject of alcoholism and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after January 1, 1986.

(f) Has completed instruction and training in spousal or partner abuse assessment, detection, and intervention. Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. This requirement applies only to applicants who begin graduate training on or after January 1, 1995. This requirement for coursework in spousal or partner abuse detection and treatment shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.

CHAPTER 475

An act to amend Section 13123 of the Health and Safety Code, relating to fire protection.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 13123 of the Health and Safety Code is amended to read:

13123. The State Fire Marshal shall remove from his or her approved list the name of any flame-retardant chemicals, flame-retardant fabric or material or any flame-retardant application concern where he or she finds after a hearing that any of the following causes exists:

(a) Selling or offering for sale a flame-retardant chemical or a flame-retardant material that is inferior to that submitted for test and approval.

(b) Distributing or disseminating or causing to be distributed or disseminated, misleading or false information with respect to any flame-retardant chemical, fabric or material.

(c) Changing the flame-retardant chemical formula or methods of flame-retardant treatment without first notifying and obtaining

approval of the change by, the State Fire Marshal.

(d) Using chemicals other than those shown on the State Fire Marshal's approved list.

(e) Using chemicals for the treatment of materials for which they have not been approved.

(f) Failure to adequately and properly treat a fabric or material to make it flame-retardant to the extent that it will successfully pass the flame-retardant tests established by the State Fire Marshal.

(g) Violating any minimum standard or any rule or regulation adopted pursuant to Section 13120.

The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the State Fire Marshal shall have all the powers granted therein. Pending hearing and decision the State Fire Marshal may temporarily remove any name from the approved list for a period not to exceed 30 days, if he or she finds that the action is required in the public interest. In any such case the order of temporary removal shall be effective upon notice to the persons affected thereby, and a hearing shall be held and a decision issued within 30 days after the notice.

CHAPTER 476

An act to amend Section 88040 of the Education Code, relating to community college classified employees.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 88040 of the Education Code is amended to read:

88040. (a) (1) Notwithstanding Section 88026, the governing board of a community college district may establish the workday and workweek schedules of classified employees with the concurrence of the employee organization, or in the absence of an employee organization, the concurrence of the affected employee.

(2) Notwithstanding Section 88027, if the governing board of a community college district establishes a workday or workweek schedule, or both, pursuant to this section, the overtime rate shall be paid for all hours worked in excess of the required workday or a workweek of 40 hours.

(b) This section applies to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060).

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act

contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 477

An act to amend Section 4600 of the Labor Code, relating to workers' compensation.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 4600 of the Labor Code is amended to read:

4600. Medical, surgical, chiropractic, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve from the effects of the injury shall be provided by the employer. In the case of his or her neglect or refusal seasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment. After 30 days from the date the injury is reported, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area. However, if an employee has notified his or her employer in writing prior to the date of injury that he or she has a personal physician, the employee shall have the right to be treated by that physician from the date of injury. If an employee requests a change of physician pursuant to Section 4601, the request may be made at any time after the injury, and the alternative physician or chiropractor shall be provided within five days of the request as required by Section 4601. For the purpose of this section, "personal physician" means the employee's regular physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, who has previously directed the medical treatment of the employee, and who retains the employee's medical records, including his or her medical history.

Where at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers'

compensation judge, the employee submits to examination by a physician, he or she shall be entitled to receive in addition to all other benefits herein provided all reasonable expenses of transportation, meals and lodging incident to reporting for the examination, together with one day of temporary disability indemnity for each day of wages lost in submitting to the examination. Regardless of the date of injury, "reasonable expenses of transportation" includes mileage fees from the employee's home to the place of the examination and back at the rate of twenty-one cents ($0.21) a mile or the mileage rate adopted by the Director of the Department of Personnel Administration pursuant to Section 19820 of the Government Code, whichever is higher, plus any bridge tolls. The mileage and tolls shall be paid to the employee at the time he or she is given notification of the time and place of the examination.

Where at the request of the employer, the employer's insurer, the administrative director, the appeals board, a workers' compensation judge, an employee submits to examination by a physician and the employee does not proficiently speak or understand the English language, he or she shall be entitled to the services of a qualified interpreter in accordance with conditions and a fee schedule prescribed by the administrative director. These services shall be provided by the employer. For purposes of this section, "qualified interpreter" means a language interpreter certified, or deemed certified, pursuant to Section 11513 or 68566 of the Government Code.

CHAPTER 478

An act to amend, repeal, and add Section 603.5 of the Welfare and Institutions Code, relating to minors, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 603.5 of the Welfare and Institutions Code is amended to read:

603.5. (a) Notwithstanding any other provision of law, in counties which adopt the provisions of this section, jurisdiction over the case of a minor alleged to have committed only a violation of the Vehicle Code classified as an infraction or a violation of a local ordinance involving the driving, parking, or operation of a motor vehicle, is with the municipal or justice court, except that the municipal or justice court may refer to the juvenile court for adjudication, cases involving a minor who has been adjudicated a ward of the juvenile court, or who has other matters pending in the

juvenile court. An alleged violation of subdivision (a) or (b) of Section 40508 of the Vehicle Code may be referred to the juvenile court for adjudication.

(b) (1) Except as provided in paragraph (3), the municipal or justice court in a county which had not, by resolution of the board of supervisors, implemented this section prior to August 15, 1993, shall use the procedures established by the juvenile court law in hearing the following traffic cases where a minor who had attained the age of 16 years but had not attained the age of 18 years on the date of the violation has been issued a notice to appear:

(A) Infractions involving an unlicensed driver, as specified in Chapter 1 (commencing with Section 12500) of Division 6 of the Vehicle Code, or driving on a suspended license, as specified in Chapter 4 (commencing with Section 14600) of Division 6 of the Vehicle Code.

(B) Infractions relating to financial responsibility, as specified in Division 7 (commencing with Section 16000) of the Vehicle Code.

(C) Speeding violations, as specified in Division 11 (commencing with Section 21000) of the Vehicle Code, where the speed limit was exceeded by more than 15 miles per hour.

(D) Infractions involving the use or possession of alcoholic beverages or drugs, as specified in Chapter 12 (commencing with Section 23100) of Division 11 of the Vehicle Code.

(E) Infractions involving a violation of Section 27360 of the Vehicle Code.

(F) Infractions involving a second violation of the Vehicle Code after the minor has once posted bail.

(2) With respect to the above exceptions, whenever possible, or as required by the court, the parent or guardian of the minor shall appear with the minor and traffic matters involving minors may not be resolved by a bail forfeiture in lieu of a court appearance.

(3) In all traffic cases heard in the municipal or justice court pursuant to this section:

(A) The notice to appear shall serve as a petition.

(B) Any provisions of juvenile court law requiring that confidentiality be observed as to cases and proceedings, prohibiting or restricting the disclosure of juvenile court records, or restricting attendance by the public at juvenile court proceedings shall not apply.

(c) The provisions of this section shall apply only in a county in which the board of supervisors, with the concurrence of the presiding judges of the superior, municipal, and justice courts, adopts a resolution making the section applicable in the county.

(d) In a county which implemented this section prior to August 15, 1993, the procedures established by the Vehicle Code may be used in hearing cases pursuant to this section.

(e) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 2. Section 603.5 is added to the Welfare and Institutions Code, to read:

603.5. (a) Notwithstanding any other provision of law, in counties which adopt the provisions of this section, jurisdiction over the case of a minor alleged to have committed only a violation of the Vehicle Code classified as an infraction or a violation of a local ordinance involving the driving, parking, or operation of a motor vehicle, is with the municipal or justice court, except that the municipal or justice court may refer to the juvenile court for adjudication, cases involving a minor who has been adjudicated a ward of the juvenile court, or who has other matters pending in the juvenile court. An alleged violation of subdivision (a) or (b) of Section 40508 of the Vehicle Code may be referred to the juvenile court for adjudication.

(b) (1) Except as provided in paragraph (3), the municipal or justice court shall use the procedures established by the juvenile court law in hearing the following traffic cases where a minor who had attained the age of 16 years but had not attained the age of 18 years on the date of the violation has been issued a notice to appear:

(A) Infractions involving an unlicensed driver, as specified in Chapter 1 (commencing with Section 12500) of Division 6 of the Vehicle Code, or driving on a suspended license, as specified in Chapter 4 (commencing with Section 14600) of Division 6 of the Vehicle Code.

(B) Infractions relating to financial responsibility, as specified in Division 7 (commencing with Section 16000) of the Vehicle Code.

(C) Speeding violations, as specified in Division 11 (commencing with Section 21000) of the Vehicle Code, where the speed limit was exceeded by more than 15 miles per hour.

(D) Infractions involving the use or possession of alcoholic beverages or drugs, as specified in Chapter 12 (commencing with Section 23100) of Division 11 of the Vehicle Code.

(E) Infractions involving a violation of Section 27360 of the Vehicle Code.

(F) Infractions involving a second violation of the Vehicle Code after the minor has once posted bail.

(2) With respect to the above exceptions, whenever possible, or as required by the court, the parent or guardian of the minor shall appear with the minor and traffic matters involving minors may not be resolved by a bail forfeiture in lieu of a court appearance.

(3) In all traffic cases heard in the municipal or justice court pursuant to this section:

(A) The notice to appear shall serve as a petition.

(B) Any provisions of juvenile court law requiring that confidentiality be observed as to cases and proceedings, prohibiting or restricting the disclosure of juvenile court records, or restricting attendance by the public at juvenile court proceedings shall not apply.

(c) This section shall apply only in a county in which the board of

supervisors, with the concurrence of the presiding judges of the superior, municipal, and justice courts, adopts a resolution making the section applicable in the county.

(d) This section shall become operative on January 1, 1998.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to save counties that have already implemented a cost-effective program regarding juvenile traffic violations from the dire economic consequences of implementing the provisions added to Section 603.5 of the Welfare and Institutions Code by Chapter 1151 of the Statutes of 1993, it is necessary that this bill take effect immediately.

CHAPTER 479

An act to amend Sections 6086.14, 6147, 6148, 6161, 6200, and 6201 of, and to add Section 6149.5 to, the Business and Professions Code, and to amend Section 116.220 of the Code of Civil Procedure, relating to attorneys.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 6086.14 of the Business and Professions Code is amended to read:

6086.14. (a) The Board of Governors of the State Bar is authorized to formulate and adopt rules and regulations necessary to establish an alternative dispute resolution discipline mediation program to resolve complaints against attorneys that do not warrant the institution of formal investigation or prosecution. The program should identify sources of client dissatisfaction and provide a mediation process to resolve those complaints or disputes unless the client objects to mediation. The refusal of an attorney to participate in the State Bar's alternative dispute resolution discipline mediation program established pursuant to this section, or the failure of an attorney to comply with any agreement reached in the State Bar's alternative dispute resolution discipline mediation program may subject that attorney to discipline. The rules may authorize discipline mediation under this article to proceed under discipline mediation programs sponsored by local bar associations in this state. The rules shall authorize a local bar association to charge a reasonable administrative fee for the purpose of offsetting the costs of maintaining the discipline mediation programs.

(b) The board of governors shall have the authority to formulate

and adopt standards and guidelines to implement the alternative dispute resolution discipline mediation program. The standards and guidelines formulated and adopted by the board, as from time to time amended, shall be effective and binding on all members, and may encompass any discipline mediation programs sponsored by local bar associations.

(c) It is the intent of the Legislature that the authorization of an alternative dispute resolution discipline mediation program not be construed as limiting or altering the powers of the Supreme Court of this state or the State Bar to disbar or discipline members of the State Bar. The records relating to the alternative dispute resolution discipline mediation program may be made available in any subsequent disciplinary action pursuant to any rule, standard, or guideline adopted by the Board of Governors of the State Bar.

SEC. 2. Section 6147 of the Business and Professions Code, as amended by Section 4 of Chapter 982 of the Statutes of 1993, is amended to read:

6147. (a) An attorney who contracts to represent a client on a contingency fee basis shall, at the time the contract is entered into, provide a duplicate copy of the contract, signed by both the attorney and the client, or the client's guardian or representative, to the client, or to the client's guardian or representative. The contract shall be in writing and shall include, but is not limited to, all of the following:

(1) A statement of the contingency fee rate that the client and attorney have agreed upon.

(2) A statement as to how disbursements and costs incurred in connection with the prosecution or settlement of the claim will affect the contingency fee and the client's recovery.

(3) A statement as to what extent, if any, the client could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee contract. This may include any amounts collected for the plaintiff by the attorney.

(4) Unless the claim is subject to the provisions of Section 6146, a statement that the fee is not set by law but is negotiable between attorney and client.

(5) If the claim is subject to the provisions of Section 6146, a statement that the rates set forth in that section are the maximum limits for the contingency fee agreement, and that the attorney and client may negotiate a lower rate.

(6) If the attorney does not meet any of the following criteria, a statement disclosing that fact:

(A) Maintains errors and omissions insurance coverage.

(B) Has filed with the State Bar an executed copy of a written agreement guaranteeing payment of all claims established against the attorney by his or her clients for errors or omissions arising out of the practice of law by the attorney in the amount specified in paragraph (c) of subsection (1) of Section B of Rule IV of the Law

Corporation Rules of the State Bar. The State Bar may charge a filing fee not to exceed five dollars ($5).

(C) If a law corporation, has filed with the State Bar an executed copy of the written agreement required pursuant to paragraph (a), (b), or (c) of subsection (1) of Section B of Rule IV of the Law Corporation Rules of the State Bar.

(b) Failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall thereupon be entitled to collect a reasonable fee.

(c) This section shall not apply to contingency fee contracts for the recovery of workers' compensation benefits.

(d) This section shall remain in effect only until January 1, 1997, and of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 3. Section 6147 of the Business and Professions Code, as added by Section 5 of Chapter 982 of the Statutes of 1993, is amended to read:

6147. (a) An attorney who contracts to represent a client on a contingency fee basis shall, at the time the contract is entered into, provide a duplicate copy of the contract, signed by both the attorney and the client, or the client's guardian or representative, to the plaintiff, or to the client's guardian or representative. The contract shall be in writing and shall include, but is not limited to, all of the following:

(1) A statement of the contingency fee rate that the client and attorney have agreed upon.

(2) A statement as to how disbursements and costs incurred in connection with the prosecution or settlement of the claim will affect the contingency fee and the client's recovery.

(3) A statement as to what extent, if any, the client could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee contract. This may include any amounts collected for the plaintiff by the attorney.

(4) Unless the claim is subject to the provisions of Section 6146, a statement that the fee is not set by law but is negotiable between attorney and client.

(5) If the claim is subject to the provisions of Section 6146, a statement that the rates set forth in that section are the maximum limits for the contingency fee agreement, and that the attorney and client may negotiate a lower rate.

(b) Failure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee.

(c) This section shall not apply to contingency fee contracts for the recovery of workers' compensation benefits.

(d) This section shall become operative on January 1, 1997.

SEC. 4. Section 6148 of the Business and Professions Code, as amended by Section 5.5 of Chapter 982 of the Statutes of 1993, is

amended to read:

6148. (a) In any case not coming within Section 6147 in which it is reasonably foreseeable that total expense to a client, including attorney fees, will exceed one thousand dollars ($1,000), the contract for services in the case shall be in writing. At the time the contract is entered into, the attorney shall provide a duplicate copy of the contract signed by both the attorney and the client, or the client's guardian or representative, to the client or to the client's guardian or representative. The written contract shall contain all of the following:

(1) Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the case.

(2) The general nature of the legal services to be provided to the client.

(3) The respective responsibilities of the attorney and the client as to the performance of the contract.

(4) If the attorney does not meet any of the following criteria, a statement disclosing that fact:

(A) Maintains errors and omissions insurance coverage.

(B) Has filed with the State Bar an executed copy of a written agreement guaranteeing payment of all claims established against the attorney by his or her clients for errors or omissions arising out of the practice of law by the attorney in the amount specified in paragraph (c) of subdivision (1) of Section B of Rule IV of the Law Corporation Rules of the State Bar. The State Bar may charge a filing a fee not to exceed five dollars ($5).

(C) If a law corporation, has filed with the State Bar an executed copy of the written agreement required pursuant to paragraph (a), (b), or (c) of subsection (1) of Section B of Rule IV of the Law Corporation Rules of the State Bar.

(b) All bills rendered by an attorney to a client shall clearly state the basis thereof. Bills for the fee portion of the bill shall include the amount, rate, basis for calculation, or other method of determination of the attorney's fees and costs. Bills for the cost and expense portion of the bill shall clearly identify the costs and expenses incurred and the amount of the costs and expenses. Upon request by the client, the attorney shall provide a bill to the client no later than 10 days following the request unless the attorney has provided a bill to the client within 31 days prior to the request, in which case the attorney may provide a bill to the client no later than 31 days following the date the most recent bill was provided. The client is entitled to make similar requests at intervals of no less than 30 days following the initial request. In providing responses to client requests for billing information, the attorney may use billing data that is currently effective on the date of the request, or, if any fees or costs to that date cannot be accurately determined, they shall be described and estimated.

(c) Failure to comply with any provision of this section renders

the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee.

(d) This section shall not apply to any of the following:

(1) Services rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is otherwise impractical.

(2) An arrangement as to the fee implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client.

(3) If the client knowingly states in writing, after full disclosure of this section, that a writing concerning fees is not required.

(4) If the client is a corporation.

(e) This section applies prospectively only to fee agreements following its operative date.

(f) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 5. Section 6148 of the Business and Professions Code, as added by Section 6 of Chapter 982 of the Statutes of 1993, is amended to read:

6148. (a) In any case not coming within Section 6147 in which it is reasonably foreseeable that total expense to a client, including attorney fees, will exceed one thousand dollars ($1,000), the contract for services in the case shall be in writing. At the time the contract is entered into, the attorney shall provide a duplicate copy of the contract signed by both the attorney and the client, or the client's guardian or representative, to the client or to the client's guardian or representative. The written contract shall contain all of the following:

(1) Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the case.

(2) The general nature of the legal services to be provided to the client.

(3) The respective responsibilities of the attorney and the client as to the performance of the contract.

(b) All bills rendered by an attorney to a client shall clearly state the basis thereof. Bills for the fee portion of the bill shall include the amount, rate, basis for calculation, or other method of determination of the attorney's fees and costs. Bills for the cost and expense portion of the bill shall clearly identify the costs and expenses incurred and the amount of the costs and expenses. Upon request by the client, the attorney shall provide a bill to the client no later than 10 days following the request unless the attorney has provided a bill to the client within 31 days prior to the request, in which case the attorney may provide a bill to the client no later than 31 days following the date the most recent bill was provided. The client is entitled to make similar requests at intervals of no less than 30 days following the

initial request. In providing responses to client requests for billing information, the attorney may use billing data that is currently effective on the date of the request, or, if any fees or costs to that date cannot be accurately determined, they shall be described and estimated.

(c) Failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee.

(d) This section shall not apply to any of the following:

(1) Services rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is otherwise impractical.

(2) An arrangement as to the fee implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client.

(3) If the client knowingly states in writing, after full disclosure of this section, that a writing concerning fees is not required.

(4) If the client is a corporation.

(e) This section applies prospectively only to fee agreements following its operative date.

(f) This section shall become operative on January 1, 1997.

SEC. 6. Section 6149.5 is added to the Business and Professions Code, to read:

6149.5. (a) Upon the payment of one hundred dollars ($100) or more in settlement of any third-party liability claim the insurer shall provide written notice to the claimant if both of the following apply:

(1) The claimant is a natural person.

(2) The payment is delivered to the claimant's lawyer or other representative by draft, check, or otherwise.

(b) For purposes of this section, "written notice" includes providing to the claimant a copy of the cover letter sent to the claimant's attorney or other representative that accompanied the settlement payment.

(c) This section shall not create any cause of action for any person against the insurer based upon the insurer's failure to provide the notice to a claimant required by this section. This section shall not create a defense for any party to any cause of action based upon the insurer's failure to provide this notice.

SEC. 7. Section 6161 of the Business and Professions Code is amended to read:

6161. An applicant for registration as a law corporation shall supply to the State Bar all necessary and pertinent documents and information requested by the State Bar concerning the applicant's plan of operation, including, but not limited to, a copy of its articles of incorporation, certified by the Secretary of State, a copy of its bylaws, certified by the secretary of the corporation, the name and address of the corporation, the names and addresses of its officers, directors, shareholders, members, if any, and employees who will

render professional services, the address of each office, and any fictitious name or names which the corporation intends to use. The State Bar may provide forms of application. If the Board of Governors or a committee authorized by it finds that the corporation is duly organized and existing or duly qualified for the transaction of intrastate business pursuant to the General Corporation Law, or pursuant to subdivision (b) of Section 13406 of the Corporations Code, that each officer (except as provided in Section 13403 of the Corporations Code), director, shareholder (except as provided in subdivision (b) of Section 13406 of the Corporations Code), and each employee who will render professional services is a licensed person as defined in the Professional Corporation Act, or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and that from the application it appears that the affairs of the corporation will be conducted in compliance with law and the rules and regulations of the State Bar, the State Bar shall upon payment of the registration fee in such amount as it may determine issue a certificate of registration. The applicant shall include with the application, for each shareholder of the corporation licensed in a foreign country but not in this state or in any other state, territory, or possession of the United States, a certificate from the authority in the foreign country currently having final jurisdiction over the practice of law, which shall verify the shareholder's admission to practice in the foreign country, the date thereof, and the fact that the shareholder is currently in good standing as an attorney or counselor at law or the equivalent. If the certificate is not in English, there shall be included with the certificate a duly authenticated English translation thereof. The application shall be signed and verified by an officer of the corporation.

SEC. 8. Section 6200 of the Business and Professions Code is amended to read:

6200. (a) The board of governors shall, by rule, establish, maintain, and administer a system and procedure for the arbitration, and may establish, maintain, and administer a system and procedure for mediation of disputes concerning fees, costs, or both, charged for professional services by members of the State Bar or by members of the bar of other jurisdictions. The rules may include provision for a filing fee in such amount as the board may, from time to time, determine.

(b) This article shall not apply to any of the following:

(1) Disputes where a member of the State Bar of California is also admitted to practice in another jurisdiction or where an attorney is only admitted to practice in another jurisdiction, and he or she maintains no office in the State of California, and no material portion of the services were rendered in the State of California.

(2) Claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct, except as provided in subdivision (a) of Section 6203.

(3) Disputes where the fee or cost to be paid by the client or on his or her behalf has been determined pursuant to statute or court order.

(c) Arbitration under this article shall be voluntary for a client and shall be mandatory for an attorney if commenced by a client. Mediation under this article shall be voluntary for an attorney and a client.

(d) The board of governors shall adopt rules to allow arbitration and mediation of attorney fee and cost disputes under this article to proceed under arbitration and mediation systems sponsored by local bar associations in this state. Rules of procedure promulgated by local bar associations are subject to review by the board to insure that they provide for a fair, impartial, and speedy hearing and award.

(e) In adopting or reviewing rules of arbitration under this section the board shall provide that the panel shall include one attorney member whose area of practice is either, at the option of the client, civil law, if the attorney's representation involved civil law, or criminal law, if the attorney's representation involved criminal law, as follows:

(1) If the panel is composed of three members the panel shall include one attorney member whose area of practice is either, at the option of the client, civil or criminal law, and shall include one lay member.

(2) If the panel is composed of one member, that member shall be an attorney whose area of practice is either, at the option of the client, civil or criminal law.

(f) In any arbitration or mediation conducted pursuant to this article by the State Bar or by a local bar association, pursuant to rules of procedure approved by the board of governors, an arbitrator or mediator, as well as the arbitrating association and its directors, officers, and employees, shall have the same immunity which attaches in judicial proceedings.

(g) In the conduct of arbitrations under this article the arbitrator or arbitrators may do all of the following:

(1) Take and hear evidence pertaining to the proceeding.

(2) Administer oaths and affirmations.

(3) Compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding.

(h) Participation in mediation is a voluntary consensual process, based on direct negotiations between the attorney and his or her client, and is an extension of the negotiated settlement process. All discussions and offers of settlement are confidential and may not be disclosed in any subsequent arbitration or other proceedings.

SEC. 9. Section 6201 of the Business and Professions Code is amended to read:

6201. (a) The rules adopted by the board of governors shall provide that an attorney shall forward a written notice to the client prior to or at the time of service of summons or claim in an action

against the client for recovery of fees, costs, or both, covered by the provisions of this article. The written notice shall be in the form that the board of governors prescribes, and shall include a statement of the client's right to arbitration under this article. Failure to give this notice shall be a ground for the dismissal of the action.

The rules adopted by the board of governors shall provide that the client's failure to request arbitration within 30 days after receipt of notice from the attorney shall be deemed a waiver of the client's right to arbitration under the provisions of this article.

(b) If an attorney, or the attorney's assignee, subject to the provisions of this article, commences an action in any court, and the dispute is not one to which subdivision (b) of Section 6200 applies, the client may stay the action by serving and filing a request for arbitration in accordance with the rules established by the board of governors pursuant to subdivision (a) of Section 6200. The request for arbitration shall be served and filed prior to the filing of an answer in the action; failure to so request arbitration prior to the filing of an answer shall be deemed a waiver of the client's right to arbitration under the provisions of this article if notice of the client's right to arbitration was given pursuant to subdivision (a).

(c) Upon filing and service of the request for arbitration, the action shall be stayed, without the necessity of court order, until the award of the arbitrators is issued or the arbitration is otherwise terminated, and the time of the continuance of the stay shall not be part of the time limited for the commencement of the action. The stay may be vacated in whole or in part, after a hearing duly noticed by any party or the court, if the court finds that the matter, or any part of it, is not an appropriate one for arbitration under the provisions of this article. The action may thereafter proceed subject to the provisions of Section 6204.

(d) A client's right to request or maintain arbitration under the provisions of this article is waived by the client commencing an action or filing any pleading seeking either of the following:

(1) Judicial resolution of a fee dispute to which this article applies.

(2) Affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct.

(e) If the client waives the right to arbitration under this article, the parties may stipulate to set aside the waiver and to proceed with arbitration.

SEC. 10. Section 116.220 of the Code of Civil Procedure is amended to read:

116.220. (a) The small claims court shall have jurisdiction in the following actions:

(1) Except as provided in subdivision (c), for recovery of money, if the amount of the demand does not exceed five thousand dollars ($5,000).

(2) Except as provided in subdivision (c), to enforce payment of delinquent unsecured personal property taxes in an amount not to

exceed five thousand dollars ($5,000), if the legality of the tax is not contested by the defendant.

(3) To issue the writ of possession authorized by Sections 1861.5 and 1861.10 of the Civil Code if the amount of the demand does not exceed five thousand dollars ($5,000).

(4) To confirm, correct, or vacate a fee arbitration award not exceeding five thousand dollars ($5,000) between an attorney and client that is binding or has become binding, or to conduct a hearing de novo between an attorney and client after nonbinding arbitration of a fee dispute involving no more than five thousand dollars ($5,000) in controversy, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code.

(b) In any action seeking relief authorized by subdivision (a), the court may grant equitable relief in the form of rescission, restitution, reformation, and specific performance, in lieu of, or in addition to, money damages. The court may issue a conditional judgment. The court shall retain jurisdiction until full payment and performance of any judgment or order.

(c) Notwithstanding subdivision (a), the small claims court shall have jurisdiction over a defendant guarantor who is required to respond based upon the default, actions, or omissions of another, only if the demand does not exceed two thousand five hundred dollars ($2,500).

(d) In any case in which the lack of jurisdiction is due solely to an excess in the amount of the demand, the excess may be waived, but any waiver shall not become operative until judgment.

CHAPTER 480

An act to add Section 14005.20 to the Welfare and Institutions Code, relating to tuberculosis, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 14005.20 is added to the Welfare and Institutions Code, immediately following Section 14005.19, to read:

14005.20. (a) The State Department of Health Services shall adopt the option made available under Section 13603 of the federal Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66) to pay allowable tuberculosis related services for persons infected with tuberculosis.

(b) The income and resources of these persons may not exceed the maximum amount for a disabled person as described in Section 1902(a)(10)(A)(i) of Title XIX of the federal Social Security Act (42

U.S.C. Sec. 1396a(a)(10)(A)(i)).

SEC. 2. The State Department of Health Services may adopt emergency regulations to implement the applicable provisions of this act in accordance with the Administrative Procedure Act , Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The initial adoption of emergency regulations shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare. The emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the provisions of this act will be in place for the entire 1994–95 fiscal year to provide for and facilitate the orderly administration of the system for providing human services to the people of the state, it is necessary that this act take effect immediately.

CHAPTER 481

An act to add Section 17147.7 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 17147.7 is added to the Revenue and Taxation Code, to read:

17147.7. (a) Gross income does not include any income which is received as a reward from a crime hotline that is authorized by any governmental entity.

(b) For the purposes of this section, "crime hotline" means any method of direct communication established by a government agency or a private, nonprofit organization exempt from taxation under Section 23701d for the purpose of permitting individuals to report criminal activity to that agency or organization, or any other designated government agency.

(c) This section shall not apply to an employee of an agency or organization establishing or operating a crime hotline or to an employee of an organization that has contributed to the reward described in subdivision (a).

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 482

An act to amend Section 1857.9 of the Insurance Code, relating to insurance.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 1857.9 of the Insurance Code is amended to read:

1857.9. (a) An insurer doing business in this state, except as provided by subdivision (f), shall report on a calendar year basis for each class of insurance designated in the prior calendar year by the commissioner pursuant to subdivision (b) for policies issued or issued for delivery in California, the following:

(1) The number of policies written, the direct premiums written, the direct premiums earned, the direct losses paid, the direct losses incurred, the direct losses unpaid (not including losses incurred but not reported) the number of outstanding claims at year end and the number of claims paid in the preceding year, the allocated loss adjustment expense, and the percentage of allocated loss adjustment expense attributable to defense attorney expenses.

(2) For each loss reserve for each class, whether the reserve is discounted in anticipation of future investment earnings.

(3) The commissioner shall waive the requirements of paragraph (1) for any information that has been provided to the Insurance Services Office by the insurer, if the Insurance Services Office provides the information to the commissioner on or before the date on which the insurer is required to file the statement.

(b) No later than October 1 of each year the commissioner shall designate those classes of insurance, as defined by the Insurance Services Office, that are generally unavailable or unaffordable in California, or for which there have been unusually great premium

increases, or in the case of any class of liability insurance, for which reinsurance is generally unavailable or unaffordable in the state or for which there have been unusually great reinsurance premium increases. The factors the commissioner shall consider in making this determination shall include, but are not limited to, the following:

(1) Consumer complaints.

(2) Rate complaints.

(3) Surveillance by the department.

(4) Market conduct.

(c) Insurers shall not be required to report under this section information required to be reported under Sections 1857.7, 1864, 11555.2, and 12963.

(d) The department shall retain the information reported pursuant to this section for a period of no less than three years.

(e) Insurers that are members of the same insurance group may aggregate the information required by this section in a single report.

(f) The reports required by this section shall not be applicable to any insurer that has been established for less than three years or can demonstrate upon application to the commissioner that its market share is less than 1 percent of the coverage for which the commissioner seeks information. However, the commissioner may deny the exemption application if he or she reasonably determines (1) that the aggregate data, when reported, is less than 60 percent of the written premium volume for the class, or (2) that unless the insurer reported its data, the aggregate data reported would not be statistically credible or reasonably complete and informative. An insurer that has been exempted by the commissioner from reporting shall, upon request of the commissioner, report the information required by subdivision (a) to cover the three most recent calendar years, in accordance with subdivision (g). In no event shall any insurer that has reported data for a calendar year pursuant to this section be required to report that same data in a subsequent year.

(g) The reports required by this section shall be filed on a form provided by the commissioner no later than May 1 of the calendar year following the year for which the information is reported.

(h) The department shall adopt regulations implementing this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, except that for the purposes of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, any regulations adopted under this section shall be deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare. These regulations shall remain in effect for 180 days. The regulations may require insurers to report the information required by subdivision (d) by categories other than those used by the Insurance Services Office.

(i) The information provided pursuant to subdivision (a) shall be confidential and not revealed by the department, except that the commissioner may publish an analysis of the data in aggregate form

or in a manner which does not disclose confidential information about identified insurers or insureds.

CHAPTER 483

An act to amend Section 30461.6 of the Revenue and Taxation Code, and to amend Section 9 of Chapter 661 of the Statutes of 1993, relating to breast cancer.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 30461.6 of the Revenue and Taxation Code, as added by Chapter 661 of the Statutes of 1993, is amended to read:

30461.6. (a) Notwithstanding Section 30461, the board shall transmit the revenue derived from the increase in the cigarette tax rate of one mill ($0.001) per cigarette imposed by Section 30101 on and after January 1, 1994, to the Treasurer to be deposited in the State Treasury to the credit of the Breast Cancer Fund, which fund is hereby created. The Breast Cancer Fund shall consist of two accounts: the Breast Cancer Research Account and the Breast Cancer Control Account. The revenues deposited in the fund shall be divided equally between the two accounts.

(b) The moneys in the accounts within the Breast Cancer Fund shall, upon appropriation by the Legislature, be allocated as follows:

(1) The moneys in the Breast Cancer Research Account shall be allocated for research with respect to the cause, cure, treatment, earlier detection, and prevention of breast cancer as follows:

(A) Ten percent to the Cancer Surveillance Section of the State Department of Health Services for the collection of breast cancer-related data and the conduct of breast cancer-related epidemiological research by the state cancer registry established pursuant to Section 211.3 of the Health and Safety Code.

(B) Ninety percent to the Breast Cancer Research Program, which is hereby created at the University of California, for the awarding of grants and contracts to researchers for research with respect to the cause, cure, treatment, prevention, and earlier detection of breast cancer and with respect to the cultural barriers to accessing the health care system for early detection and treatment of breast cancer.

(2) The moneys in the Breast Cancer Control Account shall be allocated to the Breast Cancer Control Program, which is hereby created for the provision of early breast cancer detection services for uninsured and underinsured women. The Breast Cancer Control Program shall be established in the State Department of Health Services and shall be administered in coordination with the breast

and cervical cancer control program established pursuant to Public Law 101-354.

(c) The early breast cancer detection services provided by the Breast Cancer Control Program shall include all of the following:

(1) Screening, including mammography, of women for breast cancer as an early detection health care measure.

(2) After screening, medical referral of screened women and services necessary for definitive diagnosis, including nonradiological techniques or biopsy.

(3) If a positive diagnosis is made, then assistance and advocacy shall be provided to help the person obtain necessary treatment.

(4) Outreach and health education activities to ensure that uninsured and underinsured women are aware of and appropriately utilize the services provided by the Breast Cancer Control Program.

(d) Any entity funded by the Breast Cancer Control Program shall coordinate with other local providers of breast cancer screening, diagnostic, followup, education, and advocacy services to avoid duplication of effort. Any entity funded by the program shall comply with any applicable state and federal standards regarding mammography quality assurance.

(e) Administrative costs of the State Department of Health Services shall not exceed 10 percent of the funds allocated to the Breast Cancer Control Program created pursuant to paragraph (2) of subdivision (b). Indirect costs of the entities funded by this program shall not exceed 12 percent. The department shall define "indirect costs" in accordance with applicable state and federal law.

(f) Any entity funded by the Breast Cancer Control Program shall collect data and maintain records that are determined by the State Department of Health Services to be necessary to facilitate the state department's ability to monitor and evaluate the effectiveness of the entities and the program. Commencing with the program's second year of operation, the State Department of Health Services shall submit an annual report to the Legislature and any other appropriate entity. The costs associated with this report shall be paid from the allocation made pursuant to paragraph (2) of subdivision (b). The report shall describe the activities and effectiveness of the program and shall include, but not be limited to, the following types of information regarding those served by the program:

(1) The number.

(2) The ethnic, geographic, and age breakdown.

(3) The stages of presentation.

(4) The diagnostic and treatment status.

(g) The Breast Cancer Control Program shall be conducted in consultation with the Breast Cancer Research Program created pursuant to subparagraph (B) of paragraph (1) of subdivision (b).

(h) In implementing the Breast Cancer Control Program, the State Department of Health Services may appoint and consult with an advisory panel appointed by the State Director of Health Services and consisting of one ex officio, nonvoting member from the Breast

Cancer Research Program, breast cancer researchers, and representatives from voluntary, nonprofit health organizations, health care professional organizations, breast cancer survivor groups, and breast cancer and health care-related advocacy groups. It is the intent of the Legislature that breast cancer-related survivors and advocates and health advocates for low-income women compose at least one-third of the advisory panel. It is also the intent of the Legislature that the State Department of Health Services collaborate closely with the panel.

(i) It is the intent of the Legislature in enacting the Breast Cancer Control Program to decrease cancer mortality rates attributable to breast cancer among uninsured and underinsured women, with special emphasis on low-income, Native American, and minority women. It is also the intent of the Legislature that the communities served by the Breast Cancer Control Program reflect the ethnic, racial, cultural, and geographic diversity of the state and that the Breast Cancer Control Program fund entities where uninsured and underinsured women are most likely to seek their health care.

(j) The State Department of Health Services or any entity funded by the Breast Cancer Control Program shall collect personal and medical information necessary to administer this program from any individual applying for services under the program. The information shall be confidential and shall not be disclosed other than for purposes directly connected with the administration of this program or except as otherwise provided by law or pursuant to prior written consent of the subject of the information.

The State Department of Health Services or any entity funded by the Breast Cancer Control Program may disclose the confidential information to medical personnel and fiscal intermediaries of the state to the extent necessary to administer this program, and to other state public health agencies or medical researchers when the confidential information is necessary to carry out the duties of those agencies or researchers in the investigation, control, or surveillance of breast cancer.

(k) The State Department of Health Services shall adopt regulations to implement this act in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The initial adoption of implementing regulations shall be deemed an emergency and shall be considered as necessary for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Section 11346.1. Emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days.

(*l*) It is the intent of the Legislature in enacting this section that this section supersede and be operative in place of Section 30461.6 of the Revenue and Taxation Code as added by Assembly Bill 478 of the 1993–94 Regular Session.

SEC. 2. Section 9 of Chapter 661 of the Statutes of 1993 is

amended to read:

Sec. 9. (a) The Legislature hereby requests the University of California to establish and administer the Breast Cancer Research Program, which is created by this act, as a comprehensive grant and contract program to support research efforts into the cause, cure, treatment, earlier detection, and prevention of breast cancer. It is the intent of the Legislature that this program incorporate the principles and organizational elements specified in this act, including, but not limited to, a research program office with a director and other necessary staff, a Breast Cancer Research Council, and research review panels.

(b) For the purposes of this section:

(1) "Breast cancer research" includes, but is not limited to, research in the fields of biomedical science and engineering, the social, economic and behavioral sciences, epidemiology, technology development and translation, and public health.

(2) "Council" means the Breast Cancer Research Council.

(3) "Grantee" means any qualifying public, private, or nonprofit agency or individual, including, but not limited to, colleges, universities, hospitals, laboratories, research institutions, local health departments, voluntary health agencies, health maintenance organizations, corporations, students, fellows, entrepreneurs, and individuals conducting research in California.

(4) "Program" means the Breast Cancer Research Program.

(5) "University" means the University of California.

(c) It is the intent of the Legislature that this program be administered pursuant to the following principles:

(1) The university shall work in close collaboration with the council and seek the consent of the council before taking an action different from the action recommended by the council.

(2) The council shall develop the strategic objectives and priorities of the program, actively participate in the overall management of the program, and make final recommendations on which research grants should be funded based on the research priorities established for the program and the technical merits of the proposals as determined by peer review panels.

(3) The program shall fund innovative and creative research, with a special emphasis on research that complements, rather than duplicates, the research funded by the federal government and other entities.

(4) The university and the council shall work in close collaboration with the Breast Cancer Control Program established in this act.

(5) All research funds shall be awarded on the basis of the research priorities established for the program and the scientific merit of the proposed research, as determined by an open, competitive peer review process that ensures objectivity, consistency, and high quality. All investigators, regardless of affiliation, shall have equal access and opportunity to compete for

program funds.

(6) The peer review process for the selection of research grants awarded under this program shall be generally modeled on that used by the National Institute of Health in its grantmaking process.

(7) An awardee shall be awarded grants for the full cost, both direct and indirect, of conducting the sponsored research consistent with those federal guidelines governing all federal research grants and contracts. All intellectual property assets developed under this program shall be treated in accordance with state and federal law.

(8) In establishing its research priorities, the council shall consider a broad range of cross-disciplinary breast cancer research, as defined in paragraph (1) of subdivision (b), including, but not limited to, research into the cause, cure, and prevention of breast cancer; translational and technological research, including research regarding the development and translation of technologies of earlier detection; research regarding the cultural, economic, and legal barriers to accessing the health care system for early detection and treatment of breast cancer; and research examining the link between breast cancer and environmental factors, including both natural and industrial chemicals, estrogen imitators, and electromagnetic fields.

(d) It is the intent of the Legislature that the university, as lead agency, do all of the following:

(1) Establish the Breast Cancer Research Council within 45 days of the enactment of this act in accordance with the following:

(A) The council shall consist of at least 13 and no more than 15 members representing a range of expertise and experience, appointed by the President of the University of California from nominations submitted by relevant organizations, as follows:

(i) Four members from breast cancer survivor and breast cancer-related advocacy groups, including, but not limited to, the California Breast Cancer Organizations (CABCO).

(ii) Four members drawn from the ranks of scientists or clinicians, including one from an independent research university in California. The scientists shall have expertise covering the various fields of scientific endeavor, including, but not limited to, the fields of biomedical research and engineering, social, economic, and behavioral research, epidemiology, and public health.

(iii) Two members from nonprofit health organizations with a commitment to breast cancer research and control.

(iv) One member who is a practicing breast cancer medical specialist.

(v) Two members from private industry with an interest in breast cancer research and control, including, but not limited to, entrepreneurs, or persons from the science or high technology industry or persons from the health care sector.

(vi) One ex officio, nonvoting member from the Breast Cancer Control Program.

(B) If the president appoints more than 13 members, it is the intent of the Legislature that the proportional representation remain

substantially the same as set forth in subparagraph (A).

(C) Members shall serve without compensation, but may receive reimbursement for travel and other necessary expenses actually incurred in the performance of their official duties.

(D) Membership shall be staggered in such a way as to maintain a full council while ensuring a reasonable degree of continuity of expertise and consistency of direction.

(2) Provide overall coordination of the program.

(3) Provide staff assistance to the program and council.

(4) Develop administrative procedures relative to the solicitation, review, and awarding of grants to ensure an impartial, high quality peer review system.

(5) Recruit and supervise research review panels. The membership of these panels shall vary depending on the subject matter of proposals and review requirements, and shall draw on the most qualified individuals. The work of the review panels shall be administered pursuant to policies and procedures established for the implementation of the program. In order to avoid conflicts of interest and to ensure access to qualified reviewers, the university may utilize reviewers not only from California but also from outside the state. When serving on review panels, institutions, corporations, or individuals who have submitted grant applications for funding by this program shall be governed by conflict-of-interest provisions consistent with the National Institute of Health Manual (Chapter 4510 (item h)), and any applicable conflict-of-interest provisions in state law.

(6) Provide for periodic program evaluation to ensure that research funded is consistent with program goals.

(7) Maintain a system of financial reporting and accountability.

(8) Provide for the systematic dissemination of research results to the public and the health care community, and provide for a mechanism to disseminate the most current research findings in the areas of cause, treatment, cure, earlier detection, and prevention of breast cancer, in order that these findings may be applied to the planning, implementation, and evaluation of the breast cancer-related programs of the State Department of Health Services, including the Breast Cancer Control Program authorized by this act.

(9) Develop policies and procedures to facilitate the translation of research results into commercial, alternate technological, and other applications wherever appropriate and consistent with state and federal law.

(10) Transmit, on or before December 31, 1994, and annually on or before each December 31 thereafter, a report to the Legislature on grants made, grants in progress, program accomplishments, and future program directions. Each report shall include, but not be limited to, the following information:

(A) The number and dollar amounts of research grants, including the amount allocated to indirect costs.

(B) The subject of research grants.

(C) The relationship between federal and state funding for breast cancer research.

(D) The relationship between each project and the overall strategy of the research program.

(E) A summary of research findings including discussion of promising new areas.

(F) The institutions and campuses receiving grant awards.

In addition, the first annual report shall include an evaluation and recommendations concerning the desirability and feasibility of requiring for-profit grantees to compensate the state in the event that a grant results in the development of a profit-making product. This evaluation shall include, but not be limited to, the costs and benefits of requiring a for-profit grantee to repay the grant, to provide the product at cost to Medi-Cal and other state programs serving low-income breast cancer patients, and to pay the state a percentage of the royalties derived from the product.

(e) It is the intent of the Legislature that no more than 5 percent of the allocation to the university be used for the purposes of administration of this program.

(f) It is the intent of the Legislature that the responsibilities of the council shall include, but not be limited to, the following:

(1) Development and review of the strategic objectives and research priorities of the program.

(2) Delineation of resource allocation across the various priorities established for the program.

(3) Participation in periodic program and financial review, including the report transmitted pursuant to paragraph (10) of subdivision (d).

(4) Development and review of guidelines to ensure fairness, neutrality, and adherence to the principles of merit and quality in the conduct of the program.

(5) Development of appropriate linkages to nonacademic entities, including, but not limited to, voluntary organizations, health care delivery systems, industry, government agencies, research entrepreneurs, and public officials.

(6) Development and review of criteria and standards for granting awards.

(7) Oversight and review of the request for applications (RFA).

(8) Review of research review panel reports and recommendations for grant awards.

(9) Making of final recommendations on which grants are to be awarded.

(10) Development and review of oversight mechanisms for the dissemination of research results.

(11) Development and review of policies and liaison programs to facilitate the translation of research results into commercial, alternate technological, or other applications wherever appropriate.

(12) Establishment of its own internal rules of operation.

(13) Participation in the identification and recruitment of

scientists with relevant expertise for possible participation in a peer review panel. The council may propose to assign a member of the council to sit as a nonvoting member of the peer review panels.

CHAPTER 484

An act to amend Sections 1357.06 and 1357.51 of the Health and Safety Code, and to amend Sections 10198.7 and 10708 of the Insurance Code, relating to health care coverage.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 1357.06 of the Health and Safety Code is amended to read:

1357.06. (a) Preexisting condition provisions of a plan contract shall not exclude coverage for a period beyond six months following the individual's effective date of coverage and may only relate to conditions for which medical advice, diagnosis, care, or treatment, including prescription drugs, was recommended or received from a licensed health practitioner during the six months immediately preceding the effective date of coverage.

(b) A plan that does not utilize a preexisting condition provision may impose a waiting period, not to exceed 60 days, before the coverage issued subject to this article shall become effective. During the waiting period no premiums shall be charged to the enrollee or the subscriber.

(c) In determining whether a preexisting condition provision or a waiting period applies to any person, a plan shall credit the time the person was covered under qualifying prior coverage, provided the person becomes eligible for coverage under the succeeding plan contract within 30 days of termination of prior coverage, exclusive of any waiting period, and applies for coverage with the succeeding plan contract within the applicable enrollment period. However, if a person's employment has ended, the availability of health coverage offered through employment or sponsored by an employer has terminated, or an employer's contribution toward health coverage has terminated, a plan shall credit the time the person was covered under qualifying prior coverage if the person becomes eligible for health coverage offered through employment or sponsored by an employer within 180 days, exclusive of any waiting period, and applies for coverage under the succeeding plan contract within the applicable enrollment period.

(d) In addition to the preexisting condition exclusions authorized by subdivision (a) and the waiting period authorized by subdivision (b), health plans providing coverage to a guaranteed association may

impose on employers or individuals purchasing coverage who would not be eligible for guaranteed coverage if they were not purchasing through the association a waiting period, not to exceed 60 days, before the coverage issued subject to this article shall become effective. During the waiting period, no premiums shall be charged to the enrollee or the subscriber.

SEC. 2. Section 1357.51 of the Health and Safety Code is amended to read:

1357.51. (a) No plan contract that covers three or more enrollees shall exclude coverage for any individual on the basis of a preexisting condition provision for a period greater than six months following the individual's effective date of coverage. Preexisting condition provisions contained in plan contracts may relate only to conditions for which medical advice, diagnosis, care, or treatment, including use of prescription drugs, was recommended or received from a licensed health practitioner during the six months immediately preceding the effective date of coverage.

(b) No plan contract that covers one or two individuals shall exclude coverage on the basis of a preexisting condition provision for a period greater than 12 months following the individual's effective date of coverage, nor shall limit or exclude coverage for a specific enrollee by type of illness, treatment, medical condition, or accident, except for satisfaction of a preexisting condition clause pursuant to this article. Preexisting condition provisions contained in plan contracts may relate only to conditions for which medical advice, diagnosis, care, or treatment, including use of prescription drugs, was recommended or received from a licensed health practitioner during the 12 months immediately preceding the effective date of coverage.

(c) A plan that does not utilize a preexisting condition provision may impose a waiting period not to exceed 60 days, before the coverage issued subject to this article shall become effective. During the waiting period, the plan is not required to provide health care services and no premium shall be charged to the subscriber or enrollee.

(d) A plan that does not utilize a preexisting condition provision in plan contracts that cover one or two individuals may impose a contract provision excluding coverage for waivered conditions. No plan may exclude coverage on the basis of a waivered condition for a period greater than 12 months following the individual's effective date of coverage. A waivered condition provision contained in plan contracts may relate only to conditions for which medical advice, diagnosis, care, or treatment, including use of prescription drugs, was recommended or received from a licensed health practitioner during the 12 months immediately preceding the effective date of coverage.

(e) In determining whether a preexisting condition provision, a waivered condition provision, or a waiting period applies to any enrollee, a plan shall credit the time the enrollee was covered under

qualifying prior coverage, provided the enrollee becomes eligible for coverage under the succeeding plan contract within 30 days of termination of prior coverage, exclusive of any waiting period, and applies for coverage under the succeeding plan within the applicable enrollment period.

However, if a person's employment has ended, the availability of health coverage offered through employment or sponsored by an employer has terminated, or an employer's contribution toward health coverage has terminated, a plan shall credit the time the person was covered under qualifying prior coverage if the person becomes eligible for health coverage offered through employment or sponsored by an employer within 180 days, exclusive of any waiting period, and applies for coverage under the succeeding plan contract within the applicable enrollment period.

(f) No plan shall exclude late enrollees from coverage for more than 12 months from the date of the late enrollee's application for coverage. No plan shall require any premium or other periodic charge to be paid by or on behalf of a late enrollee during the period of exclusion from coverage permitted by this subdivision.

SEC. 3. Section 10198.7 of the Insurance Code is amended to read:

10198.7. (a) No health benefit plan that covers three or more persons and that is issued, renewed, or written by any insurer, nonprofit hospital service plan, self-insured employee welfare benefit plan, fraternal benefits society, or any other entity shall exclude coverage for any individual on the basis of a preexisting condition provision for a period greater than six months following the individual's effective date of coverage, nor shall limit or exclude coverage for a specific insured person by type of illness, treatment, medical condition, or accident except for satisfaction of a preexisting clause pursuant to this article. Preexisting condition provisions contained in health benefit plans may relate only to conditions for which medical advice, diagnosis, care, or treatment, including use of prescription drugs, was recommended or received from a licensed health practitioner during the six months immediately preceding the effective date of coverage.

(b) No health benefit plan that covers one or two individuals and that is issued, renewed, or written by any insurer, nonprofit hospital service plan, self-insured employee welfare benefit plan, fraternal benefits society, or any other entity shall exclude coverage on the basis of a preexisting condition provision for a period greater than 12 months following the individual's effective date of coverage, nor shall limit or exclude coverage for a specific insured person by type of illness, treatment, medical condition, or accident, except for satisfaction of a preexisting condition clause pursuant to this article. Preexisting condition provisions contained in health benefit plans may relate only to conditions for which medical advice, diagnosis, care, or treatment, including use of prescription drugs, was recommended or received from a licensed health practitioner

during the 12 months immediately preceding the effective date of coverage.

(c) A carrier that does not utilize a preexisting condition provision may impose a waiting period not to exceed 60 days, before the coverage issued subject to this article shall become effective. During the waiting period, the carrier is not required to provide health care services and no premium shall be charged to the subscriber or enrollee.

(d) A carrier that does not utilize a preexisting condition provision in health plans that cover one or two individuals may impose a contract provision excluding coverage for waivered conditions. No carrier may exclude coverage on the basis of a waivered condition for a period greater than 12 months following the individual's effective date of coverage. A waivered condition provision contained in health benefit plans may relate only to conditions for which medical advice, diagnosis, care, or treatment, including use of prescription drugs, was recommended or received from a licensed health practitioner during the 12 months immediately preceding the effective date of coverage.

(e) In determining whether a preexisting condition provision, a waivered condition provision, or a waiting period applies to any person, all health benefit plans shall credit the time the person was covered under qualifying prior coverage, provided the person becomes eligible for coverage under the succeeding health benefit plan within 30 days of termination of prior coverage, exclusive of any waiting period, and applies for coverage under the succeeding plan within the applicable enrollment period. However, if a person's employment has ended, the availability of health coverage offered through employment or sponsored by an employer has terminated or, an employer's contribution toward health coverage has terminated, a carrier shall credit the time the person was covered under qualifying prior coverage if the person becomes eligible for health coverage offered through employment or sponsored by an employer within 180 days, exclusive of any waiting period, and applies for coverage under the succeeding plan within the applicable enrollment period.

(f) No health benefit plan that covers three or more persons and that is issued, renewed, or written by any insurer, nonprofit hospital service plan, self-insured employee welfare benefit plan, fraternal benefits society, or any other entity may exclude late enrollees from coverage for more than 12 months from the date of the late enrollee's application for coverage. No insurer, nonprofit hospital service plan, self-insured employee welfare benefit plan, fraternal benefits society, or any other entity shall require any premium or other periodic charge to be paid by or on behalf of a late enrollee during the period of exclusion from coverage permitted by this subdivision.

(g) Any entity providing aggregate or specific stop loss coverage or any other assumption of risk with reference to a health benefit plan shall provide that the plan meets all requirements of this article

concerning waiting periods, preexisting condition provisions, and late enrollees.

SEC. 4. Section 10708 of the Insurance Code is amended to read:

10708. (a) Preexisting condition provisions of health benefit plans shall not exclude coverage for a period beyond six months following the individual's effective date of coverage and may only relate to conditions for which medical advice, diagnosis, care, or treatment, including the use of prescription medications, was recommended by or received from a licensed health practitioner during the six months immediately preceding the effective date of coverage.

(b) A carrier that does not utilize a preexisting condition provision may impose a waiting period, not to exceed 60 days, before the coverage issued subject to this chapter shall become effective. During the waiting period, the carrier is not required to provide health care benefits and no premiums shall be charged to the subscriber or enrollee.

(c) In determining whether a preexisting condition provision or a waiting period applies to any person, a plan shall credit the time the person was covered under qualifying prior coverage, provided the person becomes eligible for coverage under the succeeding plan contract within 30 days of termination of prior coverage, exclusive of any waiting period, and applies for coverage with the succeeding plan contract within the applicable enrollment period. However, if a person's employment has ended, the availability of health coverage offered through employment or sponsored by an employer has terminated, or an employer's contribution toward health coverage has terminated, a plan shall credit the time the person was covered under qualifying prior coverage if the person becomes eligible for health coverage offered through employment or sponsored by an employer within 180 days, exclusive of any waiting period, and applies for coverage under the succeeding health benefit plan within the applicable enrollment period.

(d) A carrier providing aggregate or specific stop loss coverage or any other assumption of risk with reference to a health benefit plan shall provide that the plan meets all requirements of this section concerning preexisting condition provisions and waiting periods.

(e) In addition to the preexisting condition exclusions authorized by subdivision (a) and the waiting period authorized by subdivision (b), carriers providing coverage to a guaranteed association may impose on employers or individuals purchasing coverage who would not be eligible for guaranteed coverage if they were not purchasing through the association a waiting period, not to exceed 60 days, before the coverage issued subject to this chapter shall become effective. During the waiting period, the carrier is not required to provide health care benefits and no premiums shall be charged to the enrollee or the subscriber.

CHAPTER 485

An act to amend Sections 69760, 69761, 69761.5, 69761.7, 69763, 69765, 69769.3, 69769.5, 69772, and 69774 of the Education Code, relating to student financial aid.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 69760 of the Education Code is amended to read:

69760. California is hereby authorized to participate in the Federal Family Education Loan Program for eligible postsecondary students and their parents, which includes, but is not limited to, the Federal Stafford Loans, the Federal Unsubsidized Stafford Loans, the Federal Parent Loans for Undergraduate Students (PLUS), and the Federal Consolidation Loans. The programs shall be consistent with Title IV of the act of Congress entitled the "Higher Education Act of 1965" (P.L. 89-329) and extensions thereof, the Education Amendments of 1976 (P.L. 94-482), or any similar act of Congress, and the rules and regulations adopted under those acts.

SEC. 2. Section 69761 of the Education Code is amended to read:

69761. The purposes of California's participation in the Federal Family Education Loan Program are as follows:

(a) To provide a source of loans to eligible students to assist them in meeting educational costs at eligible schools of their choice.

(b) To accept, receive and administer the funds provided under Title IV of the "Higher Education Act of 1965," and extensions thereof, or any similar act of Congress.

SEC. 3. Section 69761.5 of the Education Code is amended to read:

69761.5. The commission shall serve as a state student loan guarantee agency, pursuant to P.L. 94-482, and subsequent federal regulations, including, but not limited to, the following provisions:

(a) The commission shall be the designated state agency for receiving any federal funds for administrative costs and payments of insurance obligations.

(b) Educational loans to undergraduate and graduate students, or to their parent or parents, or to undergraduate and graduate students and to their parent or parents, shall not exceed the limits provided in federal law.

(c) Participating educational institutions shall notify lenders and the commission of enrollment status changes and current addresses of participating students.

(d) No educational institution shall lend to more than 50 percent of its undergraduate students; this provision may be waived by the United States Secretary of Education if the limitation creates a

hardship for present or prospective students.

(e) A student may receive a loan only if he or she is maintaining satisfactory progress in a course of study pursuant to practices of the institution in which the student is enrolled, and provided the student has not previously defaulted on any student loan. If a student has made satisfactory arrangements to repay a default on a previous student loan, the student may be eligible to receive a loan.

(f) An insurance premium may be charged student borrowers not to exceed the maximum rate allowable, pursuant to federal statutes and regulations.

SEC. 4. Section 69761.7 of the Education Code is amended to read:

69761.7. To promote responsible and timely repayment of guaranteed student loans, the commission shall establish a process to ensure regular, annual credit reporting on the repayment status of borrowers whose loans are guaranteed by the commission and whose paper has matured.

SEC. 5. Section 69763 of the Education Code is amended to read:

69763. (a) The commission shall administer the Federal Family Education Loan Program in this state as authorized pursuant to this chapter. The commission is hereby vested with authority to enter into any contract with the United States Secretary of Education or any other federal officer or agency under Title IV of the Higher Education Act of 1965, any extension thereof, or any similar act of Congress, and is hereby vested with all other necessary power and authority to cooperate with the government of the United States, or any agency or agencies thereof, in administration of the act of Congress and the rules and regulations adopted thereunder. The commission shall adopt any rules and regulations it deems necessary for the proper administration of this chapter.

(b) The rules and regulations adopted by the commission pursuant to this section shall include a provision authorizing the commission to impose a civil penalty in an amount not to exceed twenty-five thousand dollars ($25,000) per violation against any financial or educational institution that violates any applicable law, rule, regulation, limitation, consent agreement, or school or lender agreement, relative to a state financial aid program. The rules and regulations adopted pursuant to this section shall provide all of the following:

(1) No civil penalty shall be imposed against an institution without first affording that institution an opportunity to request a hearing and if a request for a hearing is made, a hearing shall be held before a representative of the commission.

(2) No civil penalty shall be imposed against an institution unless an action against that institution has been initiated pursuant to Section 30302 or 30304 of Title 5 of the California Code of Regulations.

(c) Any moneys derived from the assessment of penalties pursuant to this section shall be deposited into the State Guaranteed Loan Reserve Fund.

SEC. 6. Section 69765 of the Education Code is amended to read:

69765. (a) The commission shall guarantee any student loan made pursuant to this article in the amount specified in federal statutes and regulations.

(b) The commission shall establish the ratio of reserve funds to loans outstanding.

SEC. 7. Section 69769.3 of the Education Code is amended to read:

69769.3. (a) The Loan Study Council established pursuant to Section 69769 shall be composed of members appointed from the following groups:

(1) Five representatives of the lending community participating in the Federal Family Education Loan Program.

(2) One representative each from the University of California, the California State University, the California Community Colleges, a private nonprofit postsecondary education institution, and a private for-profit postsecondary education institution.

(3) One representative from the California Association of Student Financial Aid Administrators.

(4) Five student representatives from the same postsecondary segments listed in paragraph (2). In no event shall a student representative be appointed to serve simultaneously as the representative of more than one of these five postsecondary groups.

(5) One representative from a secondary market participating in the Federal Family Education Loan Program.

(b) The representatives appointed by the commission pursuant to subdivision (a) shall be selected by the commission from lists provided to its chair by each group described in that subdivision.

SEC. 8. Section 69769.5 of the Education Code is amended to read:

69769.5. The Loan Study Council shall review the activities and policies of the Federal Family Education Loan Program and shall regularly advise the commission of its findings and recommendations. The Loan Study Council may request information and data that it deems appropriate from the Student Aid Commission with respect to the Federal Family Education Loan Program or any other loan program administered by the commission.

SEC. 9. Section 69772 of the Education Code is amended to read:

69772. The commission shall annually report on the numbers of students participating in the program, total loan volume, and the postsecondary educational institutions in which participating students are enrolled.

SEC. 10. Section 69774 of the Education Code is amended to read:

69774. (a) The commission shall provide, with each application form for the Federal Family Education Loan Program a notice to the student informing him or her that, for purposes of collecting on a defaulted loan, the commission is entitled to seek employment, wage, and other information from the Employment Development Department on any person who defaults on a guaranteed student

loan.

(b) A common application form may be utilized for student loans in compliance with the program eligibility and financial forms specified in Section 69534.1.

CHAPTER 486

An act to amend Section 2350 of, to repeal and add Sections 2331 and 2440 of, to repeal and add Article 1 (commencing with Section 2260) of Chapter 1 of Part 9 of Division 2 of, and to repeal Sections 2332 and 2333 of, the Labor Code, relating to employment.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Article 1 (commencing with Section 2260) of Chapter 1 of Part 9 of Division 2 of the Labor Code is repealed.

SEC. 2. Article 1 (commencing with Section 2260) is added to Chapter 1 of Part 9 of Division 2 of the Labor Code, to read:

Article 1. Sanitary Standards

2260. All employers shall comply with standards relating to sanitary facilities adopted by the Occupational Safety and Health Standards Board pursuant to Chapter 6 (commencing with Section 140) of Division 1.

SEC. 3. Section 2331 of the Labor Code is repealed.

SEC. 4. Section 2331 is added to the Labor Code, to read:

2331. The owner or manager of every foundry or metal shop engaged in the casting, fabricating, or working over in any manner of any metal or compound, where one or more persons are employed, shall comply with standards relating to mechanical ventilation systems adopted by the Occupational Safety and Health Standards Board pursuant to Chapter 6 (commencing with Section 140) of Division 1.

SEC. 5. Section 2332 of the Labor Code is repealed.

SEC. 6. Section 2333 of the Labor Code is repealed.

SEC. 7. Section 2350 of the Labor Code is amended to read:

2350. Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees of different sexes, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated.

SEC. 8. Section 2440 of the Labor Code is repealed.

SEC. 9. Section 2440 is added to the Labor Code, to read:

2440. All employers shall comply with standards relating to the ready availability of medical services and first aid adopted by the Occupational Safety and Health Standards Board, pursuant to Chapter 6 (commencing with Section 140) of Division 1.

CHAPTER 487

An act to amend Sections 995.660 and 995.670 of the Code of Civil Procedure, relating to bonds.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 995.660 of the Code of Civil Procedure is amended to read:

995.660. (a) If an objection is made to the sufficiency of an admitted surety insurer on a bond or if the bond is required to be approved, the insurer shall submit to the court or officer the following documents:

(1) The original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws, or other instrument entitling or authorizing the person who executed the bond to do so, within 10 calendar days of the insurer's receipt of a request to submit the instrument.

(2) A certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner, within 10 calendar days of the insurer's receipt of a request to submit the copy.

(3) A certificate from the clerk of the county in which the court or officer is located that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted, within 10 calendar days of the insurer's receipt of the certificate.

(4) Copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10 (commencing with Section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, within 10 calendar days of the insurer's receipt of a request to submit the statements.

(b) If the admitted surety insurer complies with subdivision (a), and if it appears that the bond was duly executed, that the insurer is authorized to transact surety insurance in the state, and that its assets exceed its liabilities in an amount equal to or in excess of the amount of the bond, the insurer is sufficient and shall be accepted or approved as surety on the bond, subject to Section 12090 of the Insurance Code.

SEC. 2. Section 995.670 of the Code of Civil Procedure is amended to read:

995.670. (a) This section applies to a bond executed, filed, posted, furnished, or otherwise given as security pursuant to any statute of this state or any law or ordinance of a public agency.

No public agency shall require an admitted surety insurer to comply with any requirements other than those in Section 995.660 whenever an objection is made to the sufficiency of the admitted surety insurer on the bond or if the bond is required to be approved.

(b) For the purposes of this section, "public agency" means the state, any agency or authority, any city, county, city and county, district, municipal or public corporation, or any instrumentality thereof.

CHAPTER 488

An act to amend Section 1417.6 of the Penal Code, relating to crimes.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 1417.6 of the Penal Code is amended to read:

1417.6. (a) The provisions of Section 1417.5 shall not apply to any dangerous or deadly weapons, narcotic or poisonous drugs, explosives, or any property of any kind or character whatsoever the possession of which is prohibited by law and that was used by a defendant in the commission of the crime of which the defendant was convicted, or with which the defendant was armed or that the defendant had upon his or her person at the time of the defendant's arrest.

Any of this property introduced or filed as an exhibit shall be, by order of the trial court, destroyed or otherwise disposed of under the conditions provided in the order no sooner than 60 days following the final determination of the criminal action or proceeding.

(b) (1) Every person who knowingly has in his or her possession any tool or device that is seized and of a type used in the commission of a violation of Section 10801, 10802, or 10803 of the Vehicle Code, shall be subject to having the tool or device intended for the above purpose deemed a nuisance as provided in paragraph (2).

(2) An evidentiary hearing shall be held only upon conviction of the defendant and after 15 days' notice is given to the defendant of the state's intent to declare as a nuisance any property that is described in paragraph (1). All relevant evidence shall be admissible at the hearing and the state shall prove by a preponderance of the

evidence that the property seized is of a type used in facilitating the commission of the crime of which the defendant was convicted.

(3) If a person purports to be the lawful owner of any tool or device the state seeks to be declared a nuisance, the person shall show proof by a preponderance of the evidence at the hearing pursuant to paragraph (2), that he or she owns the tool or device, and the illegal use of the tool or device was without his or her knowledge or consent.

(4) Following a determination that the property shall be declared a nuisance, the property shall be disposed of as provided in paragraph (2) or (3) of subdivision (b) of Section 1417.5.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 489

An act to add Chapter 37 (commencing with Section 25000) to Part 13 of, and to add and repeal Section 22335 of, the Education Code, relating to the State Teachers' Retirement System, and making an appropriation therefor.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 22335 is added to the Education Code, to read:

22335. (a) All moneys in the Teacher Tax-Sheltered Annuity Fund are continuously appropriated to the board for disbursement for the purposes of the tax-sheltered annuity plan previously provided under this part.

(b) The board may provide by board rule for optional forms of payment from the Teacher Tax-Sheltered Annuity Fund.

(c) The Teacher Tax-Sheltered Annuity Fund as it existed on December 31, 1994, shall continue to exist for purposes of this section.

(d) This section shall cease to be operative 180 days after the date that an annuity contract and custodial account established pursuant

to Chapter 36 (commencing with Section 24950) becomes operative. On the date this section ceases to be operative this section is repealed unless a statute that is enacted before that date deletes or extends that date.

SEC. 2. Chapter 37 (commencing with Section 25000) is added to Part 13 of the Education Code, to read:

CHAPTER 37. DEFERRED COMPENSATION PLANS

25000. (a) The board may develop one or more deferred compensation plans under Section 457 of the Internal Revenue Code which an employer may choose to establish and offer to its employees who are members of the system.

(b) In the event that an employer adopts a deferred compensation plan described in subdivision (a):

(1) The employer shall enter into a written contractual arrangement with the system under which the system, or a third-party administrator acting on behalf of the system, shall provide investment, recordkeeping, and administrative services in respect of the plan.

(2) The initial period of the contractual arrangement described in paragraph (1) shall be for a term of five years.

(3) The plan shall continue to constitute a separate plan established and maintained by the adopting employer.

(4) The system shall be treated as acting on behalf of the employer in administering the plan.

(5) The terms and administration of the plan shall be in accordance with the applicable provisions of Section 457 of the Internal Revenue Code.

(6) The interest of an employee, or his or her beneficiary, participating in the plan in the assets, including amounts deferred under the plan and paid over to the Teachers' Deferred Compensation Fund described in Section 25001, of the employer sponsoring the plan shall not be senior to that of the general creditors of the employer.

(7) In administering the plan on behalf of the employer, the board shall have the same investment authority and discretion and be subject to the same fiduciary standards pursuant to Chapter 4 (commencing with Section 22250), with respect to amounts deferred under the plan as applied by the system with respect to the Teachers' Retirement Fund.

(c) In the event that an employer establishes and maintains a deferred compensation plan described in subdivision (a), the plan shall be offered to all of its employees who are members of the system.

(d) An employee participating in a deferred compensation plan established by an employer under this section shall enter into a written agreement with the employer for the deferral of compensation prior to the performance of the services to which that

compensation relates.

(e) In the event that an employer chooses to establish and maintain a deferred compensation plan described in subdivision (a) that is to be administered by the system, the employer shall take all necessary or appropriate action to implement this section in cooperation with the system.

25001. (a) The Teachers' Deferred Compensation Fund is hereby established to serve as the repository of funds in respect of the deferred compensation plans administered by the system pursuant to this chapter. Notwithstanding any other provision of law, the system may retain a bank or trust company to serve as custodian of the moneys of the Teachers' Deferred Compensation Fund and to provide for safekeeping, recordkeeping, delivery, securities valuation, or investment performance reporting services, or services in connection with investment of the fund.

(b) The Teachers' Deferred Compensation Fund shall consist of the following sources and receipts, and disbursements shall be accounted for as set forth below:

(1) Premiums determined by the system and paid by participating employers and employees for the cost of administering the deferred compensation plan.

(2) Asset management fees as determined by the system assessed against investment earnings of investment option or of other investment funds. These fees shall be disclosed to employees participating in the plan.

(3) Compensation deferrals to be paid in monthly installments by employers sponsoring deferred compensation plans described in Section 25000 for investment by the system. The moneys shall be deposited in the investment corpus account within the Teachers' Deferred Compensation Fund and invested in accordance with the investment options selected by the participating employee.

(4) All moneys in the Teachers' Deferred Compensation Fund for disbursement to participating employees shall be continuously appropriated without regard to fiscal year. Disbursements to participating employees shall be paid from a disbursement account within the Teachers' Deferred Compensation Fund in accordance with applicable federal law pertaining to deferred compensation plans.

(5) Income, of whatever nature, earned on the Teachers' Deferred Compensation Fund shall be credited to the appropriate account. The accounts of participating employees of the employer shall be individually posted to reflect amounts of compensation deferred and investment gains and losses. A periodic statement shall be given to each member.

(6) The system shall have exclusive control of the administration and investment of the Teachers' Deferred Compensation Fund.

(7) All of the system's costs of administering the deferred compensation plans shall be recovered from the employees who participate in the plans or assets of the Teachers' Deferred

Compensation Fund in a manner acceptable to the board.

CHAPTER 490

An act to amend Section 21636 of the Business and Professions Code, and to add Sections 21201.3 and 21203 to the Financial Code, relating to personal property.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 21636 of the Business and Professions Code is amended to read:

21636. (a) Every secondhand dealer and coin dealer shall retain in his or her possession for a period of 30 days all tangible personal property reported under Sections 21628, 21629, and 21630. The 30-day holding period with respect to such tangible personal property shall commence with the date the report of its acquisition was made to the chief of police or to the sheriff by the secondhand dealer and coin dealer. The chief of police or the sheriff may for good cause, as specified by the Department of Justice, authorize prior disposition of any such property described in a specific report; provided, that a secondhand dealer who disposes of tangible personal property pursuant to that authorization shall report the sale thereof to the chief of police or the sheriff.

(b) During the 30-day holding period specified in subdivision (a) every secondhand dealer and coin dealer shall produce any tangible personal property reported under Sections 21628, 21629, and 21630 for inspection by any peace officer or employee designated by the chief of police or sheriff.

(c) Property subject to inspection as specified in subdivision (b) and property held in pawn, which is stored off the business premises of the licensee, shall, upon request for inspection, be produced at the licensee's business premises within one business day of a request.

SEC. 2. Section 21201.3 is added to the Financial Code, to read:

21201.3. (a) The written contract required pursuant to Section 21201 shall contain a provision in 8-point type stating whether the item or items pledged are to be stored at the business premises of the pawnbroker.

(b) Every pawnbroker shall display a sign at his or her premises indicating whether or not pawned items are insured.

(c) Notwithstanding Section 21209, a violation of this section is an infraction.

(d) This section shall become operative July 1, 1995.

SEC. 3. Section 21203 is added to the Financial Code, to read:

21203. Any property held in pawn which is not subject to a hold

pursuant to Section 21647 of the Business and Professions Code shall be returned to the pledger immediately upon redemption of the loan. However, if the property is stored off the business premises of the licensee, the property shall be returned within one business day of a request for redemption of the loan.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 491

An act to add Section 17510.95 to the Business and Professions Code, relating to charitable solicitations.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 17510.95 is added to the Business and Professions Code, to read:

17510.95. The Attorney General shall annually publish a report that includes information provided to the Registry of Charitable Trusts pursuant to Section 17510.9 for all charities reporting under that section. The report shall be made available to public main libraries in the state at no cost and to any person upon request and the payment of a reasonable fee to cover the costs of publication and distribution.

CHAPTER 492

An act to amend Section 1302 of the Business and Professions Code, to amend Sections 113, 116, 1616, and 1616.5 of, to amend, repeal, and add Sections 10040, 10601, and 10605.3 of, and to add Sections 10039 and 10039.1 to, the Health and Safety Code, relating to health.

[Approved by Governor September 10, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 1302 of the Business and Professions Code is amended to read:

1302. (a) There is hereby established in the State Treasury, the Clinical Laboratory Improvement Fund.

(b) All fees established under this chapter and Chapter 4 (commencing with Section 1600) of Division 2 of the Health and Safety Code shall be collected by and paid to the department, and shall be deposited by the department in the Clinical Laboratory Improvement Fund, along with any other moneys received by the department for the purpose of licensing, certification, inspection, proficiency testing, or other regulation of clinical laboratories, blood banks, or clinical laboratory personnel.

(c) Moneys deposited in the Clinical Laboratory Improvement Fund that are appropriated in the annual Budget Act, or any other appropriation, for support of, or expenditure by, the state department shall, upon appropriation, be expended by the state department to administer this chapter and Chapter 4 (commencing with Section 1600) of Division 2 of the Health and Safety Code. All fees collected pursuant to this chapter shall, upon appropriation, be expended to administer this chapter. All fees collected pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Health and Safety Code shall, upon appropriation, be expended to administer that chapter.

SEC. 2. Section 113 of the Health and Safety Code is amended to read:

113. (a) The fees or charges for the issuance or renewal of any permit, license, registration, or document pursuant to Sections 403, 436.53, 527, 1017, 1639.5, 1676, 1677, 2202, 2805, 4083, 11887, 23013, 25049, 25059, 25064, 25079.3, 25094, 25628, 25694, 25696, 25697, 25812.8, 25816, 25817, 26262, 26506.2, 26593.2, 26593.4, 26688, 27010, 27011, 28126, 28410, 28411, and 28702 shall be adjusted annually by the percentage change printed in the Budget Act for those items appropriating funds to the state department. After the first annual adjustment of fees or charges pursuant to this section, the fees or charges subject to subsequent adjustment shall be the fees or charges for the prior calendar year. The percentage change shall be determined by the Department of Finance, and shall include at least

the total percentage change in salaries and operating expenses of the state department. However, the total increase in amounts collected under this section shall not exceed the total increased cost of the program or service provided.

(b) The state department shall publish annually a list of the actual numerical fee charges for each permit, license, certification, or registration governed by this section. This adjustment of fees and publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 4. Section 116 of the Health and Safety Code is amended to read:

116. (a) The fees or charges required to accompany an application for the issuance or renewal of any license pursuant to Section 1300 of the Business and Professions Code or pursuant to Section 1616 shall be adjusted annually by the percentage change printed in the Budget Act and determined by dividing the General Fund appropriation to Laboratory Field Services in the current state fiscal year by the General Fund appropriation to Laboratory Field Services in the preceding state fiscal year. The fees or charges subject to adjustment pursuant to this subdivision shall be the fees or charges that would have been payable in the prior calendar year without regard to the provisions of subdivision (c).

(b) Commencing January 1, 1995, upon establishment of the Clinical Laboratory Improvement Fund, the annual adjustment required under subdivision (a) and printed in the annual Budget Act shall be determined by dividing the current fiscal year appropriation to the Clinical Laboratory Improvement Fund by the General Fund appropriation to Laboratory Field Services of the State Department of Health Services in the preceding fiscal year. Thereafter, the annual adjustment required by subdivision (a) and printed in the annual Budget Act shall be determined by dividing the current fiscal year appropriation to the Clinical Laboratory Improvement Fund by the Clinical Laboratory Improvement Fund appropriation in the preceding fiscal year.

(c) The fees or charges shall also be adjusted annually by a percentage determined by dividing the total amount of federal funds available for all programs in Laboratory Field Services of the State Department of Health Services during the federal fiscal year ending on September 30 of the year immediately preceding the effective date of the change in fees, less federal funds available for the federal fiscal year which began on October 1 of the year immediately preceding the effective date of the change in fees as indicated in any grant award letter received from the federal Department of Health and Human Services on or before November 1 of that federal fiscal year, by the total estimated revenue derived pursuant to Section 1300 of the Business and Professions Code and Section 1616 for the fiscal year beginning July 1 of the year immediately preceding the effective date of the change in fees.

(d) The department shall by January 1 of each year publish a list of actual numerical fee charges as adjusted pursuant to this section. This adjustment of fees and the publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 5. Section 1616 of the Health and Safety Code is amended to read:

1616. (a) Each application for a license or license renewal under this chapter shall be accompanied by a fee determined by the director by regulations and in an amount sufficient to cover the cost of administering this chapter but not to exceed those costs, as specified pursuant to Section 1616.5.

(b) The state department shall receive and account for all moneys received pursuant to this chapter and shall deposit them with the Treasurer for deposit in the Clinical Laboratory Improvement Fund established pursuant to Section 1302 of the Business and Professions Code. All funds received pursuant to this chapter shall, upon appropriation, be expended to administer this chapter.

(c) Each license issued under this chapter shall expire 12 months from the date of its issuance. Application for renewal of license accompanied by the fee shall be filed with the department not less than 10 days prior to the expiration each year. Failure to make a timely renewal shall result in expiration of the license.

SEC. 6. Section 1616.5 of the Health and Safety Code is amended to read:

1616.5. (a) The fee required pursuant to Section 1616 for the calendar year commencing January 1, 1992, and for each fiscal year thereafter unless adjusted pursuant to subdivision (b), shall not exceed the following:

One thousand five hundred dollars ($1,500) for a blood bank and no more than one blood collection center operated at the same location as the blood bank. In addition and irrespective of the location of the blood collection center, a fee of five hundred dollars ($500) for each additional blood collection center operated by the blood bank up to a maximum of one thousand five hundred dollars ($1,500) for three or more blood collection centers.

(b) The maximum application and renewal fees for blood bank licenses pursuant to subdivision (a) shall be adjusted annually in the manner specified in Section 116. The adjustments shall be rounded off to the nearest whole dollar.

(c) This chapter shall not be interpreted to exempt the state, a district, city, county, or city and county, from payment of fees or from meeting the requirements established pursuant to this chapter or regulations adopted thereunder.

SEC. 7. Section 10039 is added to the Health and Safety Code, to read:

10039. (a) There is hereby created in the State Treasury the Health Statistics Special Fund. The fund shall consist of revenues

including, but not limited to, all of the following:

(1) Fees or charges remitted to the State Registrar for record search or issuance of certificates, permits, registrations, or other documents pursuant to Chapter 3 (commencing with Section 26800) of Part 3 of Division 2 of Title 3 of the Government Code, and Chapter 7 (commencing with Section 10375), Chapter 8 (commencing with Section 10430), Chapter 9 (commencing with Section 10500), and Chapter 12 (commencing with Section 10600), of Division 9 of the Health and Safety Code.

(2) Funds remitted to the State Registrar by the federal Social Security Administration for participation in the enumeration at birth program.

(3) Funds remitted to the State Registrar by the National Center for Health Statistics pursuant to the federal Vital Statistics Cooperative Program.

(4) Funds deposited into the Vital Records Improvement Account pursuant to Section 10605.3 of the Health and Safety Code.

(5) Any other funds collected by the State Registrar, except Children's Trust Fund fees collected pursuant to Section 18966 of the Welfare and Institutions Code, fees allocated to the Judicial Council pursuant to Section 1852 of the Family Code, and fees collected pursuant to Section 10605.4 of the Health and Safety Code, all of which shall be deposited into the General Fund.

(b) Moneys in the Health Statistics Special Fund shall be expended by the State Registrar for the purpose of funding its existing programs and programs that may become necessary to carry out its mission, upon appropriation by the Legislature.

(c) Health Statistics Special Fund moneys shall be expended only for the purposes set forth in this section and Section 10039.1, and shall not be expended for any other purpose or for any other state program.

(d) It is the intent of the Legislature that the Health Statistics Special Fund provide for the following:

(1) Registration and preservation of vital event records and dissemination of vital event information to the public.

(2) Data analysis of vital statistics for population projections, health trends and patterns, epidemiologic research, and development of information to support new health policies.

(3) Development of uniform health data systems that are integrated, accessible, and useful in the collection of information on health status.

(e) This section shall become operative on July 1, 1995.

SEC. 8. Section 10039.1 is added to the Health and Safety Code, to read:

10039.1. (a) The State Registrar shall expend funds in the Health Statistics Special Fund, upon appropriation by the Legislature, for all of the following:

(1) Support existing programs within the State Registrar's office.

(2) Implement and support new programs within the State

Registrar's office that meet its goals and objectives.

(3) Build a data system that will support policy analysis and program decisions at all levels, be useful to health care providers, local and community agencies, and the state, and ultimately benefit consumers of health care services.

(4) Develop and maintain public health data bases.

(5) Access and analyze data in order to develop and evaluate California's health policy.

(6) Conduct special studies and prepare statistical reports concerning the health status of Californians.

(7) Develop and maintain an automation system for vital event registration.

(8) Disseminate vital event information and statistical reports to the public.

(b) This section shall become operative on July 1, 1995.

SEC. 9. Section 10040 of the Health and Safety Code is amended to read:

10040. (a) There is a State Vital Record Improvement Project Fund in the State Treasury. Not less than 10 percent of the moneys collected in the fund prior to or on December 31, 1992, less any fund reductions resulting from budget expropriations, shall, upon appropriation by the Legislature, be allocated by the State Registrar to local registrars to be utilized to improve and automate the processing of local vital record systems. Those allocations shall be based on the needs of local registrars to improve and automate record systems, as determined by the State Registrar, with emphasis on providing funds to those counties with insufficient Vital and Health Statistics Trust Fund revenue to support vital record automation.

(b) The remainder of the moneys in the fund not subject to local allocations pursuant to subdivision (a) shall, upon appropriation by the Legislature, be utilized by the State Registrar to improve and automate the processing of vital records maintained by the State Registrar.

(c) This section shall become inoperative on July 1, 1995, and, as of January 1, 1996, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1996, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 10. Section 10040 is added to the Health and Safety Code, to read:

10040. (a) There is a State Vital Record Improvement Account in the Health Statistics Special Fund.

(b) The remainder of the moneys in the account that are not subject to local allocations on July 1, 1995, pursuant to subdivision (a) of former Section 10040, shall be utilized by the State Registrar to improve and automate the processing of vital records maintained by the State Registrar.

(c) This section shall become operative July 1, 1995.

SEC. 11. Section 10601 of the Health and Safety Code is amended

to read:

10601. The money collected by the State Registrar shall be deposited with the Treasurer for credit to the General Fund.

This section shall become inoperative on July 1, 1995, and, as of January 1, 1996, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1996, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 12. Section 10601 is added to the Health and Safety Code, to read:

10601. The money collected by the State Registrar shall be deposited with the Treasurer for credit to the Health Statistics Special Fund, except for the Children's Trust Fund fees collected pursuant to Section 18966 of the Welfare and Institutions Code, the fees allocated to the Judicial Council pursuant to Section 1852 of the Family Code, and the fees collected pursuant to Section 10605.4, all of which shall be deposited in the General Fund.

This section shall become operative on July 1, 1995.

SEC. 13. Section 10605.3 of the Health and Safety Code is amended to read:

10605.3. (a) Commencing January 1, 1992, in addition to the fees prescribed by subdivisions (a) to (d), inclusive, of Section 10605, all applicants for certified copies of the records described in those subdivisions shall pay an additional fee of two dollars ($2), that shall be collected by the State Registrar, the local registrar, county recorder, or county clerk, as the case may be.

(b) Except as provided in paragraph (2), the local public official charged with the collection of the additional fee established pursuant to subdivision (a) may create a Vital and Health Statistics Trust Fund. The fees collected by local public officials pursuant to subdivision (a) shall be distributed as follows:

(1) Commencing January 1, 1992, and ending December 31, 1992, one dollar ($1) of each two dollars ($2) collected shall be deposited with the State Registrar in the State Vital Record Improvement Project Fund established pursuant to Section 10040.

(2) Commencing January 1, 1993, ninety cents ($0.90) of each two dollars ($2) collected shall be deposited with the State Registrar in the State Vital Record Improvement Project Fund established pursuant to Section 10040.

(3) The remainder of each two dollars ($2) collected shall be deposited into the collecting agency's Vital and Health Statistics Trust Fund.

(4) Any local public official that does not establish a local Vital and Health Statistics Trust Fund shall forward the entire two dollars ($2) fee to the State Registrar, who shall deposit the fees into the State Vital Record Improvement Project Fund established pursuant to Section 10040.

(5) Fees collected by the State Registrar shall be deposited into the State Vital Record Improvement Project Fund established pursuant to Section 10040.

(c) Moneys in each Vital and Health Statistics Trust Fund shall be available to the public official charged with the collection of fees pursuant to this section to defray the administrative costs of collecting and reporting with respect to those fees and for the other costs, as follows:

(1) Modernization of vital record operations, including improvement, automation, and technical support of vital record systems.

(2) Improvement in the collection and analysis of health-related birth and death certificate information, and other community health data collection and analysis, as appropriate.

(d) Funds collected pursuant to this section shall not be used to supplant existing funding that is necessary for the daily operation of vital record systems. It is the intent of the Legislature that funds collected pursuant to this section be used to enhance service to the public, to improve analytical capabilities of state and local health authorities in addressing the health needs of newborn children, maternal health problems, and to analyze the health status of the general population.

(e) Each county shall annually submit a report to the State Registrar by March 1, containing information on the amount of revenues collected pursuant to this section for the previous calendar year and on how the revenues were expended and for what purpose.

(f) It is the intent of the Legislature that the Vital Record Improvement Project be completed by January 1, 1997, and that the one dollar ($1) surcharge used to fund this project be discontinued at that time.

(g) This section shall become inoperative on July 1, 1995, and, as of January 1, 1996, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1996, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 14. Section 10605.3 is added to the Health and Safety Code, to read:

10605.3. (a) Commencing January 1, 1992, in addition to the fees prescribed by subdivisions (a) to (d), inclusive, of Section 10605, all applicants for certified copies of the records described in those subdivisions shall pay an additional fee of two dollars ($2), that shall be collected by the State Registrar, the local registrar, county recorder, or county clerk, as the case may be.

(b) Except as provided in paragraph (2), the local public official charged with the collection of the additional fee established pursuant to subdivision (a) may create a Vital and Health Statistics Trust Fund. The fees collected by local public officials pursuant to subdivision (a) shall be distributed as follows:

(1) Commencing January 1, 1992, and ending December 31, 1992, one dollar ($1) of each two dollars ($2) collected shall be deposited with the State Registrar in the State Vital Record Improvement Account established pursuant to Section 10040.

(2) Commencing January 1, 1993, ninety cents ($0.90) of each two

dollars ($2) collected shall be deposited with the State Registrar in the State Vital Record Improvement Account established pursuant to Section 10040.

(3) The remainder of each two dollars ($2) collected shall be deposited into the collecting agency's Vital and Health Statistics Trust Fund.

(4) Any local public official that does not establish a local Vital and Health Statistics Trust Fund shall forward the entire two dollars ($2) fee to the State Registrar, who shall deposit the fees into the State Vital Record Improvement Account established pursuant to Section 10040.

(5) Fees collected by the State Registrar shall be deposited into the State Vital Record Improvement Account established pursuant to Section 10040.

(c) Moneys in each Vital and Health Statistics Trust Fund shall be available to the public official charged with the collection of fees pursuant to this section to defray the administrative costs of collecting and reporting with respect to those fees and for the other costs, as follows:

(1) Modernization of vital record operations, including improvement, automation, and technical support of vital record systems.

(2) Improvement in the collection and analysis of health-related birth and death certificate information, and other community health data collection and analysis, as appropriate.

(d) Funds collected pursuant to this section shall not be used to supplant existing funding that is necessary for the daily operation of vital record systems. It is the intent of the Legislature that funds collected pursuant to this section be used to enhance service to the public, to improve analytical capabilities of state and local health authorities in addressing the health needs of newborn children, maternal health problems, and to analyze the health status of the general population.

(e) Each county shall annually submit a report to the State Registrar by March 1, containing information on the amount of revenues collected pursuant to this section for the previous calendar year and on how the revenues were expended and for what purpose.

(f) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

(g) It is the intent of the Legislature that the Vital Record Improvement Project be completed by January 1, 1997, and that the one dollar ($1) surcharge used to fund this project be discontinued at that time.

(h) This section shall become operative on July 1, 1995.

CHAPTER 493

An act to amend Sections 437c, 438, and 917.9 of the Code of Civil Procedure, relating to civil procedure, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 437c of the Code of Civil Procedure is amended to read:

437c. (a) Any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance that the court, with or without notice and upon good cause shown, may direct. Notice of the motion and supporting papers shall be served on all other parties to the action at least 28 days before the time appointed for hearing. However, if the notice is served by mail, the required 28-day period of notice shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States, and if the notice is served by facsimile transmission, Express Mail, or another method of delivery providing for overnight delivery, the required 28-day period of notice shall be increased by two court days. The motion shall be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise. The filing of the motion shall not extend the time within which a party must otherwise file a responsive pleading.

(b) The motion shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. The supporting papers shall include a separate statement setting forth plainly and concisely all material facts which the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with this requirement of a separate statement may in the court's discretion constitute a sufficient ground for denial of the motion.

Any opposition to the motion shall be served and filed not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise. The opposition, where appropriate, shall consist of affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken.

The opposition papers shall include a separate statement which responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts which the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion.

Any reply to the opposition shall be served and filed by the moving party not less than five days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise.

Evidentiary objections not made at the hearing shall be deemed waived.

Sections 1005 and 1013, extending the time within which a right may be exercised or an act may be done, do not apply to this section.

Any incorporation by reference of matter in the court's file shall set forth with specificity the exact matter to which reference is being made and shall not incorporate the entire file.

(c) The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.

(d) Supporting and opposing affidavits or declarations shall be made by any person on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavits or declarations. Any objections based on the failure to comply with the requirements of this subdivision shall be made at the hearing or shall be deemed waived.

(e) If a party is otherwise entitled to a summary judgment pursuant to this section, summary judgment shall not be denied on grounds of credibility or for want of cross-examination of witnesses furnishing affidavits or declarations in support of the summary judgment, except that summary judgment may be denied in the discretion of the court, where the only proof of a material fact offered in support of the summary judgment is an affidavit or declaration made by an individual who was the sole witness to that fact; or where a material fact is an individual's state of mind, or lack thereof, and that fact is sought to be established solely by the individual's affirmation thereof.

(f) (1) A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if that party contends that the cause of action has no merit or that there is no affirmative defense thereto, or that there is no merit to an affirmative defense as to any cause of action, or both, or that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.

(2) A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment. However, a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion.

(g) Upon the denial of a motion for summary judgment, on the ground that there is a triable issue as to one or more material facts, the court shall, by written or oral order, specify one or more material facts raised by the motion as to which the court has determined there exists a triable controversy. This determination shall specifically refer to the evidence proffered in support of and in opposition to the motion which indicates that a triable controversy exists. Upon the grant of a motion for summary judgment, on the ground that there is no triable issue of material fact, the court shall, by written or oral order, specify the reasons for its determination. The order shall specifically refer to the evidence proffered in support of, and if applicable in opposition to, the motion which indicates that no triable issue exists. The court shall also state its reasons for any other determination. The court shall record its determination by court reporter or written order.

(h) If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just.

(i) If the court determines at any time that any of the affidavits are presented in bad faith or solely for purposes of delay, the court shall order the party presenting the affidavits to pay the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur. Sanctions shall not be imposed pursuant to this subdivision except on notice contained in a party's papers, or on the court's own noticed motion, and after an

opportunity to be heard.

(j) Except where a separate judgment may properly be awarded in the action, no final judgment shall be entered on a motion for summary judgment prior to the termination of the action, but the final judgment shall, in addition to any matters determined in the action, award judgment as established by the summary proceeding herein provided for.

(k) In actions which arise out of an injury to the person or to property, when a motion for summary judgment was granted on the basis that the defendant was without fault, no other defendant during trial, over plaintiff's objection, may attempt to attribute fault to or comment on the absence or involvement of the defendant who was granted the motion.

(*l*) A summary judgment entered under this section is an appealable judgment as in other cases. Upon entry of any order pursuant to this section except the entry of summary judgment, a party may, within 20 days after service upon him or her of a written notice of entry of the order, petition an appropriate reviewing court for a peremptory writ. If the notice is served by mail, the initial period within which to file the petition shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. If the notice is served by facsimile transmission, Express Mail, or another method of delivery providing for overnight delivery, the initial period within which to file the petition shall be increased by two court days. The superior court may, for good cause, and prior to the expiration of the initial period, extend the time for one additional period not to exceed 10 days.

(m) (1) If a motion for summary adjudication is granted, at the trial of the action, the cause or causes of action within the action, affirmative defense or defenses, claim for damages, or issue or issues of duty as to the motion which has been granted shall be deemed to be established and the action shall proceed as to the cause or causes of action, affirmative defense or defenses, claim for damages, or issue or issues of duty remaining.

(2) In the trial of the action, the fact that a motion for summary adjudication is granted as to one or more causes of action, affirmative defenses, claims for damages, or issues of duty within the action shall not operate to bar any cause of action, affirmative defense, claim for damages, or issue of duty as to which summary adjudication was either not sought or denied.

(3) In the trial of an action, neither a party, nor a witness, nor the court shall comment upon the grant or denial of a motion for summary adjudication to a jury.

(n) A cause of action has no merit if either of the following exists:

(1) One or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded.

(2) A defendant establishes an affirmative defense to that cause of

action.

(o) For purposes of motions for summary judgment and summary adjudication:

(1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on that cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The defendant or cross-defendant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

(2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The plaintiff or cross-complainant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

(p) Nothing in this section shall be construed to extend the period for trial provided by Section 1170.5.

(q) Subdivisions (a) and (b) shall not apply to actions brought pursuant to Chapter 4 (commencing with Section 1159) of Title 3 of Part 3.

(r) For the purposes of this section, a change in law shall not include a later enacted statute without retroactive application.

SEC. 2. Section 438 of the Code of Civil Procedure is amended to read:

438. (a) As used in this section:

(1) "Complaint" includes a cross-complaint.

(2) "Plaintiff" includes a cross-complainant.

(3) "Defendant" includes a cross-defendant.

(b) (1) A party may move for judgment on the pleadings.

(2) The court may upon its own motion grant a motion for judgment on the pleadings.

(c) (1) The motion provided for in this section may only be made on one of the following grounds:

(A) If the moving party is a plaintiff, that the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute

a defense to the complaint.

(B) If the moving party is a defendant, that either of the following conditions exist:

(i) The court has no jurisdiction of the subject of the cause of action alleged in the complaint.

(ii) The complaint does not state facts sufficient to constitute a cause of action against that defendant.

(2) The motion provided for in this section may be made as to either of the following:

(A) The entire complaint or cross-complaint or as to any of the causes of action stated therein.

(B) The entire answer or one or more of the affirmative defenses set forth in the answer.

(3) If the court on its own motion grants the motion for judgment on the pleadings, it shall be on one of the following bases:

(A) If the motion is granted in favor of the plaintiff, it shall be based on the grounds that the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint.

(B) If the motion is granted in favor of the defendant, that either of the following conditions exist:

(i) The court has no jurisdiction of the subject of the cause of action alleged in the complaint.

(ii) The complaint does not state facts sufficient to constitute a cause of action against that defendant.

(d) The grounds for motion provided for in this section shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. Where the motion is based on a matter of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, the matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise permit.

(e) No motion may be made pursuant to this section if a pretrial conference order has been entered pursuant to Section 575, or within 30 days of the date the action is initially set for trial, whichever is later, unless the court otherwise permits.

(f) The motion provided for in this section may be made only after one of the following conditions has occurred:

(1) If the moving party is a plaintiff, and the defendant has already filed his or her answer to the complaint and the time for the plaintiff to demur to the answer has expired.

(2) If the moving party is a defendant, and the defendant has already filed his or her answer to the complaint and the time for the defendant to demur to the complaint has expired.

(g) The motion provided for in this section may be made even though either of the following conditions exist:

(1) The moving party has already demurred to the complaint or answer, as the case may be, on the same grounds as is the basis for

the motion provided for in this section and the demurrer has been overruled, provided that there has been a material change in applicable case law or statute since the ruling on the demurrer.

(2) The moving party did not demur to the complaint or answer, as the case may be, on the same grounds as is the basis for the motion provided for in this section.

(h) (1) The motion provided for in this section may be granted with or without leave to file an amended complaint or answer, as the case may be.

(2) Where a motion is granted pursuant to this section with leave to file an amended complaint or answer, as the case may be, then the court shall grant 30 days to the party against whom the motion was granted to file an amended complaint or answer, as the case may be.

(3) If the motion is granted with respect to the entire complaint or answer without leave to file an amended complaint or answer, as the case may be, then judgment shall be entered forthwith in accordance with the motion granting judgment to the moving party.

(4) If the motion is granted with leave to file an amended complaint or answer, as the case may be, then the following procedures shall be followed:

(A) If an amended complaint is filed after the time to file an amended complaint has expired, then the court may strike the complaint pursuant to Section 436 and enter judgment in favor of that defendant against that plaintiff or a plaintiff.

(B) If an amended answer is filed after the time to file an amended answer has expired, then the court may strike the answer pursuant to Section 436 and proceed to enter judgment in favor of that plaintiff and against that defendant or a defendant.

(C) Except where subparagraphs (A) and (B) apply, if the motion is granted with respect to the entire complaint or answer with leave to file an amended complaint or answer, as the case may be, but an amended complaint or answer is not filed, then after the time to file an amended complaint or answer, as the case may be, has expired, judgment shall be entered forthwith in favor of the moving party.

(i) (1) Where a motion for judgment on the pleadings is granted with leave to amend, the court shall not enter a judgment in favor of a party until the following proceedings are had:

(A) If an amended pleading is filed and the moving party contends that pleading is filed after the time to file an amended pleading has expired or that the pleading is in violation of the court's prior ruling on the motion, then that party shall move to strike the pleading and enter judgment in its favor.

(B) If no amended pleading is filed, then the party shall move for entry of judgment in its favor.

(2) All motions made pursuant to this subdivision shall be made pursuant to Section 1010.

(3) At the hearing on the motion provided for in this subdivision, the court shall determine whether to enter judgment in favor of a

particular party.

SEC. 3. Section 917.9 of the Code of Civil Procedure is amended to read:

917.9. (a) The perfecting of an appeal shall not stay enforcement of the judgment or order in cases not provided for in Sections 917.1 to 917.8, inclusive, if the trial court, in its discretion, requires an undertaking and the undertaking is not given, in any of the following cases:

(1) Appellant was found to possess money or other property belonging to respondent.

(2) Appellant is required to perform an act for respondent's benefit pursuant to judgment or order under appeal.

(3) The judgment against appellant is solely for costs awarded to the respondent by the trial court pursuant to Chapter 6 (commencing with Section 1021) of Title 14.

(b) The undertaking shall be in a sum fixed by the court and shall be in an amount sufficient to cover all damages which the respondent may sustain by reason of the stay in the enforcement of the judgment or order.

(c) The undertaking shall be in the sum fixed by the court. The undertaking shall be conditioned upon the performance of the judgment or order appealed from or payment of the sums required by the judgment or order appealed from, if the judgment or order is affirmed or the appeal is withdrawn or dismissed, and it shall provide that if the judgment or order appealed from or any part of it is affirmed, or the appeal is withdrawn or dismissed, the appellant will pay all damages which the respondent may sustain by reason of the stay in the enforcement of the judgment.

(d) For the purpose of this section, "damages" means either of the following:

(1) Reasonable compensation for the loss of use of the money or property.

(2) Payment of the amounts specified in paragraph (3) of subdivision (a).

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide needed clarification of the law regarding civil procedure at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 494

An act to amend Section 2701 of the Penal Code, relating to inmate labor.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 2701 of the Penal Code is amended to read:

2701. (a) The Department of Corrections is hereby authorized and empowered to cause the prisoners in the state prisons of this state to be employed in the rendering of services as are now, or may hereafter be, needed by the state, or any political subdivision thereof, or that may be needed for any state, county, district, municipal, school, or other public use, or that may be needed by any public institution of the state or of any political subdivision thereof, or that may be needed for use by the federal government, or any department, agency, or corporation thereof, or that may be needed for use by the government of any other state, or any department, agency, or corporation thereof, except for services provided by enterprises under the jurisdiction of the Prison Industry Authority. The Department of Corrections may enter into contracts for the purposes of this article.

(b) The Department of Corrections may cause prisoners in the prisons of this state to be employed in the rendering of emergency services for the preservation of life or property within the state, whether that property is owned by public entities or private citizens, when a county level state of emergency has been declared due to a natural disaster and the local governing board has requested the assistance of the Department of Corrections.

CHAPTER 495

An act to amend Section 18966.1 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 18966.1 of the Welfare and Institutions Code is amended to read:

18966.1. (a) Any federal funds provided for child abuse prevention challenge grants to provide matching funds to states that have established children's trust funds shall be allocated to the

counties' children's trust funds in the following manner:

(1) Counties that receive less than twenty thousand dollars ($20,000) per annum for their county children's trust funds from the fees on birth certificates collected pursuant to Section 10605 of the Health and Safety Code, shall be granted from federal matching funds that amount necessary to bring that income to the trust fund to twenty thousand dollars ($20,000) per year.

If the state's annual federal matching fund allocation is insufficient to provide each county children's trust fund with a minimum total annual funding level of twenty thousand dollars ($20,000), the Office of Child Abuse Prevention shall determine an allocation process for federal matching funds to ensure that each county's children's trust fund receives a minimum level of annual funding from all sources.

(2) The remaining funds from the federal challenge grant shall then be distributed equally among all the counties, up to ten thousand dollars ($10,000) per county.

(3) If sufficient federal matching funds exist after each county children's trust fund is provided a total annual children's trust fund allocation of twenty thousand dollars ($20,000) and after each county children's trust receives a maximum annual allocation of ten thousand dollars ($10,000) in federal matching funds, the remaining federal matching funds shall be distributed to each county children's trust fund according to population.

(b) (1) Federal challenge grant funds shall be received by the Office of Child Abuse Prevention and allocated in the manner specified in subdivision (a).

(2) Boards of supervisors may establish criteria for determining which programs shall receive funding. Boards of supervisors may accept all program proposals, prioritize those proposals, and make the final decision as to which programs shall receive funds.

(c) Federal matching funds shall be allocated pursuant to subdivision (a) for counties that have not established a local children's trust fund and shall be transferred to that county's existing children's trust fund established by the Office of Child Abuse Prevention in the State Children's Trust Fund. Nothing in this section shall prevent a county that has not established a local children's trust fund from establishing a local children's trust fund.

(d) Receipt by a county of any federal funds available for the purposes set forth in this section shall be contingent upon the provision of assurances that the county will provide to the Office of Child Abuse Prevention all information necessary to meet federal reporting mandates. Those information needs shall be identified by the department at the time federal funds are allocated.

(e) Moneys received by a county children's trust fund from private voluntary contributions shall not be considered in the calculation of federal challenge grant allocations pursuant to subdivision (a).

CHAPTER 496

An act to add Section 5037.1 to the Business and Professions Code, and to amend Section 17406 of, and to add Section 17406.1 to, the Financial Code, relating to escrow.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 5037.1 is added to the Business and Professions Code, to read:

5037.1. Nothing in subdivision (k) of Section 17406 of the Financial Code or subdivision (a) of Section 17406.1 of the Financial Code shall be construed to impair or impede a licensee's rights, duties, and obligations under Section 5037.

SEC. 2. Section 17406 of the Financial Code is amended to read:

17406. (a) Each licensee shall submit to the commissioner, at such licensee's own expense, an audit report containing audited financial statements covering the calendar year or, if such licensee has an established fiscal year, then for such fiscal year, within 105 days after the close of each such calendar or fiscal year. At such time, each licensee shall also file such additional relevant information as the commissioner may require.

(b) Within 30 days after receipt of a request from the commissioner, a licensee or other person subject to this division shall submit to the commissioner, at such person's own expense, an audit report containing audited financial statements covering the 12 calendar months next preceding the month of receipt of the request, or such other period as the commissioner may require. Unless the public interest shall otherwise require, the commissioner shall exempt a licensee from the provisions of subdivision (a) hereof in whole or in part if such licensee has complied with a request pursuant to this subdivision as of a date within the calendar or fiscal year for which such exemption is granted.

(c) A licensee whose license has been surrendered or revoked shall submit to the commissioner, at its own expense, on or before 105 days after the effective date of such surrender or revocation, a closing audit report as of such effective date, or for such other period as the commissioner may specify. Such report shall include the information specified by the commissioner. A licensee who has complied with this subdivision is exempted from subdivision (a) of this section.

(d) The reports and financial statements referred to in subdivisions (a), (b), and (c) of this section shall include at least a balance sheet and a statement of income for the year ended on the balance sheet date together with such other relevant information as the commissioner may require, and shall be prepared in accordance

with generally accepted accounting principles, and shall be accompanied by a report, certificate, or opinion of, an independent certified public accountant or independent public accountant. The audits shall be conducted in accordance with generally accepted auditing standards and the rules of the commissioner.

(e) A licensee shall make other special reports to the commissioner as the commissioner may from time to time require.

(f) For good cause and upon written request, the commissioner may extend the time for compliance with subdivisions (a) and (b) of this section.

(g) A licensee shall, when requested by the commissioner, submit its unaudited financial statements, prepared in accordance with generally accepted accounting principles and consisting of at least a balance sheet and statement of income and expense as of the date and for the period specified by the commissioner. The commissioner may require the submission of such reports on a monthly or other periodic basis.

(h) If the report, certificate, or opinion of the independent accountant referred to in subdivision (d) hereof is in any way qualified, the commissioner may require the licensee to take such action as he deems appropriate to permit an independent accountant to remove such qualifications from the report, certificate or opinion.

(i) The commissioner may reject any financial statement, report, certificate or opinion by notifying the licensee or other person required to make such filing of its rejection and the cause thereof. Within 30 days after the receipt of such notice, the licensee or other person shall correct such deficiency and the failure so to do shall be deemed a violation of this division. The commissioner shall retain a copy of all filings so rejected.

(j) The commissioner may make rules specifying the form and content of the reports and financial statements referred to in this section, and may require that such reports and financial statements be verified by the licensee in such manner as he may prescribe.

(k) Upon completion of the reports and financial statements referred to in subdivisions (a), (b), and (c), the independent accountant shall submit to the commissioner complete copies of the reports and financial statements at the same time that copies of the reports and financial statements are submitted to the licensee.

SEC. 3. Section 17406.1 is added to the Financial Code, to read:

17406.1. (a) Whenever the reports and financial statements required pursuant to subdivision (a), (b), or (c) of Section 17406 are to be reported upon or certified by an accountant other than the accountant reporting upon or certifying the licensee's most recent reports or financial statements, the licensee shall furnish the commissioner with a written notice stating whether there was any disagreement with the former accountant on any matter in connection with the preparation of the most recent reports or financial statements reported upon or certified by that former

accountant. If there was any disagreement, the licensee's written notice shall describe the reasons for the disagreement. The written notice shall be signed by the chief executive officer of the licensee. The licensee shall also request, in writing, that the former accountant furnish the licensee with a letter addressed to the commissioner stating whether the former accountant agrees with the statements contained in the licensee's written notice. If the former accountant disagrees with any of the licensee's statements, the former accountant's letter shall explain the reasons for disagreeing with the licensee's statements. The written notice of the licensee, along with the former accountant's letter shall be filed with the commissioner no later than 30 days from the date of engagement of the new accountant.

(b) The written notice of the licensee required by subdivision (a) shall be considered a notice for purposes of Section 17702.

CHAPTER 497

An act to amend Sections 3208.3, 3351, and 3370 of, and to repeal and add Section 3371 of, the Labor Code, relating to workers' compensation.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 3208.3 of the Labor Code is amended to read:

3208.3. (a) A psychiatric injury shall be compensable if it is a mental disorder which causes disability or need for medical treatment, and it is diagnosed pursuant to procedures promulgated under paragraph (4) of subdivision (j) of Section 139.2 or, until these procedures are promulgated, it is diagnosed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

(b) (1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.

(2) Notwithstanding paragraph (1), in the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.

(3) For the purposes of this section, "substantial cause" means at least 35 to 40 percent of the causation from all sources combined.

(c) It is the intent of the Legislature in enacting this section to establish a new and higher threshold of compensability for psychiatric injury under this division.

(d) Notwithstanding any other provision of this division, no compensation shall be paid pursuant to this division for a psychiatric injury related to a claim against an employer unless the employee has been employed by that employer for at least six months. The six months of employment need not be continuous. This subdivision shall not apply if the psychiatric injury is caused by a sudden and extraordinary employment condition. Nothing in this subdivision shall be construed to authorize an employee, or his or her dependents, to bring an action at law or equity for damages against the employer for a psychiatric injury, where those rights would not exist pursuant to the exclusive remedy doctrine set forth in Section 3602 in the absence of the amendment of this section by the act adding this subdivision.

(e) Where the claim for compensation is filed after notice of termination of employment or layoff, including voluntary layoff, and the claim is for an injury occurring prior to the time of notice of termination or layoff, no compensation shall be paid unless the employee demonstrates by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury and one or more of the following conditions exist:

(1) Sudden and extraordinary events of employment were the cause of the injury.

(2) The employer has notice of the psychiatric injury under Chapter 2 (commencing with Section 5400) prior to the notice of termination or layoff.

(3) The employee's medical records existing prior to notice of termination or layoff contain evidence of treatment of the psychiatric injury.

(4) Upon a finding of sexual or racial harassment by any trier of fact, whether contractual, administrative, regulatory, or judicial.

(5) Evidence that the date of injury, as specified in Section 5411 or 5412, is subsequent to the date of the notice of termination or layoff, but prior to the effective date of the termination or layoff.

(f) For purposes of this section, an employee provided notice pursuant to Sections 44948.5, 44949, 44951, 44955, 44955.6, 72411, 87740, and 87743 of the Education Code shall be considered to have been provided a notice of termination or layoff only upon a district's final decision not to reemploy that person.

(g) A notice of termination or layoff that is not followed within 60 days by that termination or layoff shall not be subject to the provisions of this subdivision, and this subdivision shall not apply until receipt of a later notice of termination or layoff. The issuance of frequent notices of termination or layoff to an employee shall be

considered a bad faith personnel action and shall make this subdivision inapplicable to the employee.

(h) No compensation under this division shall be paid by an employer for a psychiatric injury if the injury was substantially caused by a lawful, nondiscriminatory, good faith personnel action. The burden of proof shall rest with the party asserting the issue.

(i) When a psychiatric injury claim is filed against an employer, and an application for adjudication of claim is filed by an employer or employee, the division shall provide the employer with information concerning psychiatric injury prevention programs.

(j) An employee who is an inmate, as defined in subdivision (e) of Section 3351, or his or her family on behalf of an inmate, shall not be entitled to compensation for a psychiatric injury except as provided in subdivision (d) of Section 3370.

SEC. 2. Section 3351 of the Labor Code is amended to read:

3351. "Employee" means every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes:

(a) Aliens and minors.

(b) All elected and appointed paid public officers.

(c) All officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay; provided that, where the officers and directors of the private corporation are the sole shareholders thereof, the corporation and the officers and directors shall come under the compensation provisions of this division only by election as provided in subdivision (a) of Section 4151.

(d) Except as provided in subdivision (h) of Section 3352, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) All persons incarcerated in a state penal or correctional institution while engaged in assigned work or employment as defined in paragraph (1) of subdivision (a) of Section 10021 of Title 8 of the California Code of Regulations, or engaged in work performed under contract.

(f) All working members of a partnership receiving wages irrespective of profits from the partnership; provided that where the working members of the partnership are general partners, the partnership and the partners shall come under the compensation provisions of this division only by election as provided in subdivision (a) of Section 4151. If a private corporation is a general partner, "working members of a partnership" shall include the corporation and the officers and directors of the corporation, provided that the officers and directors are the sole shareholders of the corporation.

(g) For the purposes of subdivisions (c) and (f), the persons

holding the power to revoke a trust as to shares of a private corporation or as to general partnership interests held in the trust shall be deemed to be the shareholders of the private corporation or the general partners of the partnership.

SEC. 3. Section 3370 of the Labor Code is amended to read:

3370. (a) Each inmate of a state penal or correctional institution shall be entitled to the workers' compensation benefits provided by this division for injury arising out of and in the course of assigned employment and for the death of the inmate if the injury proximately causes death, subject to all of the following conditions:

(1) The inmate was not injured as the result of an assault in which the inmate was the initial aggressor, or as the result of the intentional act of the inmate injuring himself or herself.

(2) The inmate shall not be entitled to any temporary disability indemnity benefits while incarcerated in a state prison.

(3) No benefits shall be paid to an inmate while he or she is incarcerated. The period of benefit payment shall instead commence upon release from incarceration. If an inmate who has been released from incarceration, and has been receiving benefits under this section, is reincarcerated in a city or county jail, or state penal or correctional institution, the benefits shall cease immediately upon the inmate's reincarceration and shall not be paid for the duration of the reincarceration.

(4) This section shall not be construed to provide for the payment to an inmate, upon release from incarceration, of temporary disability benefits which were not paid due to the prohibition of paragraph (2).

(5) In determining temporary and permanent disability indemnity benefits for the inmate, the average weekly earnings shall be taken at not more than the minimum amount set forth in Section 4453.

(6) Where a dispute exists respecting an inmate's rights to the workers' compensation benefits provided herein, the inmate may file an application with the appeals board to resolve the dispute. The application may be filed at any time during the inmate's incarceration.

(7) After release or discharge from a correctional institution, the former inmate shall have one year in which to file an original application with the appeals board, unless the time of injury is such that it would allow more time under Section 5804 of the Labor Code.

(8) The percentage of disability to total disability shall be determined as for the occupation of a laborer of like age by applying the schedule for the determination of the percentages of permanent disabilities prepared and adopted by the administrative director.

(9) This division shall be the exclusive remedy against the state for injuries occurring while engaged in assigned work or work under contract. Nothing in this division shall affect any right or remedy of an injured inmate for injuries not compensated by this division.

(b) The Department of Corrections shall present to each inmate

of a state penal or correctional institution, prior to his or her first assignment to work at the institution, a printed statement of his or her rights under this division, and a description of procedures to be followed in filing for benefits under this section. The statement shall be approved by the administrative director and be posted in a conspicuous place at each place where an inmate works.

(c) Notwithstanding any other provision of this division, the Department of Corrections shall have medical control over treatment provided an injured inmate while incarcerated in a state prison, except, that in serious cases, the inmate is entitled, upon request, to the services of a consulting physician.

(d) Paragraphs (2), (3), and (4) of subdivision (a) shall also be applicable to an inmate of a state penal or correctional institution who would otherwise be entitled to receive workers' compensation benefits based on an injury sustained prior to his or her incarceration. However, temporary and permanent disability benefits which, except for this subdivision, would otherwise be payable to an inmate during incarceration based on an injury sustained prior to incarceration shall be paid to the dependents of the inmate. If the inmate has no dependents, the temporary disability benefits which, except for this subdivision, would otherwise be payable during the inmate's incarceration shall be paid to the State Treasury to the credit of the Uninsured Employers Fund, and the permanent disability benefits which would otherwise be payable during the inmate's incarceration shall be held in trust for the inmate by the Department of Corrections during the period of incarceration.

For purposes of this subdivision, "dependents" means the inmate's spouse or children, including an inmate's former spouse due to divorce and the inmate's children from that marriage.

(e) Notwithstanding any other provision of this division, an employee who is an inmate, as defined in subdivision (e) of Section 3351 who is eligible for vocational rehabilitation services as defined in Section 4635 shall only be eligible for direct placement services.

SEC. 4. Section 3371 of the Labor Code is repealed.

SEC. 5. Section 3371 is added to the Labor Code, to read:

3371. If the issues are complex or if the inmate applicant requests, the Department of Corrections shall furnish a list of qualified workers' compensation attorneys to permit the inmate applicant to choose an attorney to represent him or her before the appeals board.

CHAPTER 498

An act to add Section 13143.1 to the Health and Safety Code, relating to building standards.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 13143.1 is added to the Health and Safety Code, to read:

13143.1. (a) Except as provided in Section 18930, the State Fire Marshal, with the advice of the State Board of Fire Services, shall prepare, adopt, and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 establishing minimum requirements for the prevention of fire and for the protection of life and property against fire and panic in any motion picture or television production facility.

(b) In accordance with Section 13143.5, this subdivision shall not limit the authority of a city, county, city and county, or special district to set, pursuant to this division, stricter standards than those adopted pursuant to this section.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 499

An act to add Section 289.6 to the Penal Code, relating to sex offenses.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 289.6 is added to the Penal Code, to read:

289.6. (a) An employee or officer of a public entity, or an employee, officer, or agent of a private person or entity that provides a detention facility or staff for a detention facility under contract with a public entity, who engages in sexual activity with a consenting adult who is confined in a detention facility is guilty of a public offense.

(b) As used in this section, the term "public entity" means the state, a city, a county, a city and county, a joint county jail district, or any entity created as a result of a joint powers agreement between two or more public entities.

(c) As used in this section, the term "detention facility" means:

(1) A prison, jail, camp, or other correctional facility used for the confinement of adults or both adults and minors.

(2) A building or facility used for the confinement of adults or adults and minors pursuant to a contract with a public entity.

(3) A room that is used for holding persons for interviews, interrogations, or investigations and that is separate from a jail or located in the administrative area of a law enforcement facility.

(4) A vehicle used to transport confined persons during their period of confinement.

(5) A court holding facility located within or adjacent to a court building that is used for the confinement of persons for the purpose of court appearances.

(d) As used in this section, "sexual activity" means:

(1) Sexual intercourse.

(2) Sodomy, as defined in subdivision (a) of Section 286.

(3) Oral copulation, as defined in subdivision (a) of Section 288a.

(4) Penetration, however slight, of the genital or anal openings of another person by a foreign object, substance, instrument, or device, for the purpose of sexual arousal, gratification, or abuse.

(e) Consent by a confined person to sexual activity proscribed by this section is not a defense to a criminal prosecution for violation of this section.

(f) This section does not apply to sexual activity between consenting adults that occurs during an overnight conjugal visit that takes place pursuant to a court order or with the written approval of an authorized representative of the public entity that operates or contracts for the operation of the detention facility where the

conjugal visit takes place.

(g) Any violation of this section shall constitute a misdemeanor.

(h) Any person previously convicted of a violation of this section shall, upon a subsequent violation, be guilty of a felony.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 500

An act to add and repeal Section 10139.5 of the Business and Professions Code, relating to real estate, and making an appropriation therefor.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 10139.5 is added to the Business and Professions Code, to read:

10139.5. The commissioner may order the imposition of a fine not to exceed ten thousand dollars ($10,000) against any real estate broker who, following a license disciplinary hearing held in accordance with this part, is found to have violated Section 10137 by employing or compensating a person not licensed as a real estate broker or a real estate salesperson to solicit borrowers or lenders for or negotiate loans secured directly or collaterally by liens on real property.

The commissioner may only levy a fine pursuant to this section as part of and in conjunction with a license disciplinary proceeding held as prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Nothing in this section is intended to limit the authority of the commissioner to accept a monetary penalty pursuant to Section 10175.2.

The commissioner's order to levy a fine shall have the same effect as a judgment in a civil action and the commissioner may commence any action or remedy in any appropriate court of this state to collect the fine as a judgment, including recordation of the order as a judgment in the official records of any county of this state. The

commissioner's authority to commence an action or remedy to collect the fine shall not commence unless the fine is not paid within 30 days of the order becoming final, or if not paid within any other time period agreed to by the commissioner and the broker. In addition, the commissioner shall have the authority without further hearing to order the suspension of the broker's license until the fine is paid in full, including any interest accruing thereon.

All fines collected pursuant to this section shall be credited to the Real Estate Recovery Account in the Real Estate Fund.

This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

CHAPTER 501

An act to amend Section 11753.1 of, and to add Section 11753.2 to, the Insurance Code, relating to insurance.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 11753.1 of the Insurance Code is amended to read:

11753.1. (a) Any person aggrieved by any decision, action, or omission to act of a rating organization may request that the rating organization reconsider the decision, action, or omission. If the request for reconsideration is rejected or is not acted upon within 30 days by the rating organization, the person requesting reconsideration may, within a reasonable time, appeal from the decision, action, or omission of the rating organization. The appeal shall be made to the commissioner by filing a written complaint and request for a hearing specifying the grounds relied upon. If the commissioner has information on the subject appealed from and believes that probable cause for the appeal does not exist or that the appeal is not made in good faith, the commissioner may deny the appeal without a hearing. The commissioner shall otherwise hold a hearing to consider and determine the matter presented by the appeal.

(b) Any insurer adopting a change in the classification assignment of an employer that results in an increased premium shall notify in writing the employer, or where the insurance was transacted through an insurance agent or broker, the insurer shall notify the agent or broker who shall notify the employer in writing of the change and the reasons for the change. Any employer receiving this notice shall have the right to request reconsideration and appeal the reclassification pursuant to this section. The notice required by this

section shall inform the employer of his or her rights pursuant to this section. No notification shall be required when the change is a result of a regulation adopted by the Department of Insurance or other action by or under the authority of the commissioner.

An insurer shall provide written notification of the revised classification assignment to an employer within 30 days after adoption.

SEC. 2. Section 11753.2 is added to the Insurance Code, to read:

11753.2. (a) If a change in a classification assignment on a workers' compensation insurance policy results in a decreased premium, the classification change shall become effective as of the inception date of a policy in effect on the date the revised classification assignment is published by an insurer or, if the classification is assigned by the designated rating organization, when the insurer and insured are notified in writing by the designated rating organization that the erroneous classification assignment is under review. The revised classification assignment shall be applied as of the inception date of a policy that expired no more than 12 months prior to the date the revised classification assignment was published or the insurer and insured were notified in writing by the designated rating organization that assigned the classification that the erroneous classification assignment was under review, provided that the erroneous classification assignment was applicable to that policy.

(b) If a change in a classification assignment on a workers' compensation insurance policy results in an increased premium, the classification change shall become effective on the effective date of the erroneous classification assignment provided any of the following conditions occur:

(1) The revised classification assignment is published within three months of the effective date or publication date of the erroneous assignment.

(2) The insurer or, where applicable, the designated rating organization, was notified in writing within three months of the effective date or publication date of the erroneous classification assignment of a possible error.

(3) The designated rating organization notified the insurer in writing within three months of the effective date or publication date of the erroneous classification assignment that the erroneous classification assignment was under review.

If one or more of the conditions set forth in paragraphs (1), (2), and (3) do not occur, the revised classification assignment shall become effective as of the date it is published unless the publication date is less than three months prior to the expiration date of the outstanding policy, in which case the revised classification assignment shall become effective as of the inception date of the policy that replaced the outstanding policy.

(c) Any insurer that violates this section shall be subject to civil penalties in an amount of up to five thousand dollars ($5,000) per

violation.

CHAPTER 502

An act to add Section 16513.5 to the Welfare and Institutions Code, relating to social workers.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 16513.5 is added to the Welfare and Institutions Code, to read:

16513.5. Any party to a dependency proceeding may bring a motion before the juvenile court to have a social worker removed from the case. The juvenile court judge in the dependency proceeding shall grant the motion if a preponderance of evidence shows that a conflict of interest has occurred that would interfere with the social worker's ability to objectively carry out his or her duties, which may include, but is not limited to, any of the following:

(a) The social worker has had sexual contact, as defined in Section 43.93 of the Civil Code, with any party to the dependency proceedings.

(b) The social worker has a relationship with an individual who is adopting or attempting to adopt a child who is the subject of the pending dependency proceeding, and the relationship is of such a nature that a conflict of interest or bias may exist on the part of the social worker which may compromise his or her objectivity.

(c) The social worker has been convicted of perjury with regard to the dependency proceeding before the court.

CHAPTER 503

An act to amend Section 6491 of, and to add Section 8040 to, the Elections Code, relating to elections.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 6491 of the Elections Code is amended to read:

6491. The declaration of candidacy by a candidate shall be substantially as follows:

DECLARATION OF CANDIDACY

I hereby declare myself a _____ Party candidate for nomination to the office of _____ District Number _____ to be voted for at the primary election to be held _____, 19__, and declare the following to be true:

My name is _____.

I want my name and occupational designation to appear on the ballot as follows _____.

Addresses:

Residence _____

_____

Business _____

_____

Mailing _____

_____

Telephone numbers: Day _____ Evening _____

I meet the statutory and constitutional qualifications for this office (including but not limited to citizenship, residency, and party affiliation, if required).

I am at present an incumbent of the following public office (if any) _____.

If nominated, I will accept the nomination and not withdraw.

_____

Signature of candidate

State of California } ss.
County of _____ }

Subscribed and sworn to before me this _____ day of _____, 19__.

_____

Notary Public (or other official)

Examined and certified by me this _____ day of _____, 19__.

_____

Registrar of Voters—County Clerk

WARNING: Every person acting on behalf of a candidate is guilty of a misdemeanor who deliberately fails to file at the proper time and in the proper place any declaration of candidacy in his possession which is entitled to be filed under the provisions of the Elections Code Section 29302.

SEC. 2. Section 8040 is added to the Elections Code, to read:

8040. The declaration of candidacy by a candidate shall be substantially as follows:

DECLARATION OF CANDIDACY

I hereby declare myself a _____ Party candidate for nomination to the office of _____ District Number _____ to be voted for at the primary election to be held _____, 19__, and declare the following to be true:

My name is _____.

I want my name and occupational designation to appear on the ballot as follows _____.

Addresses:

Residence _____

_____

Business _____

_____

Mailing _____

_____

Telephone numbers: Day _____ Evening _____

I meet the statutory and constitutional qualifications for this office (including but not limited to citizenship, residency, and party affiliation, if required).

I am at present an incumbent of the following public office (if any) _____.

If nominated, I will accept the nomination and not withdraw.

_____

Signature of candidate

State of California
County of _____ } ss.

Subscribed and sworn to before me this _____ day of _____, 19__.

_____

Notary Public (or other official)

Examined and certified by me this _____ day of _____, 19__.

_____

Registrar of Voters—County Clerk

WARNING: Every person acting on behalf of a candidate is guilty of a misdemeanor who deliberately fails to file at the proper time and in the proper place any declaration of candidacy in his possession which is entitled to be filed under the provisions of the Elections Code Section 18202.

SEC. 3. Section 2 of this bill shall become operative only if this bill and SB 1547 are both chaptered, in which case Section 1 of this bill shall not become operative.

CHAPTER 504

An act to add Section 7109 to the Public Contract Code, relating to public contracts.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 7109 is added to the Public Contract Code, to read:

7109. (a) For purposes of this section:

(1) "Antigraffiti technology" means landscaping, paint, or other covering resistant to graffiti, or other procedures to deter graffiti.

(2) "Graffiti" means any unauthorized inscription, work, figure, or design that is marked, etched, scratched, drawn, or painted on any structural component of any building, structure, or other facility regardless of its content or nature and regardless of the nature of the material of the structural component.

(3) "Project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(b) If a public entity determines that a project may be vulnerable to graffiti and the public entity will be awarding a public works contract after January 1, 1996, for that project, it is the intent of the Legislature that the public entity may do one or more of the following:

(1) Include a provision in the public works contract that specifies requirements for antigraffiti technology in the plans and specifications for the project.

(2) Establish a method to finance a graffiti abatement program.

(3) Establish a program to deter graffiti.

CHAPTER 505

An act to add Sections 15.2, 46, 47, 48.3, and 48.5 to, and to repeal and add Section 2 of, the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959), relating to water.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 2 of the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959) is repealed.

SEC. 2. Section 2 is added to the Mojave Water Agency Law

(Chapter 2146 of the Statutes of 1959), to read:

Sec. 2. For the purposes of this act, the following terms have the following meanings unless otherwise indicated by their context:

(a) "Agency" means the Mojave Water Agency.

(b) "Agency general election" or "general agency election" means general district election as provided in the Uniform District Election Law.

(c) "Board" means the board of directors of the agency.

(d) "County" means the County of San Bernardino.

(e) "District" means any municipality, county water district, reclamation district, irrigation district, water replenishment district, water conservation district, flood control district or other district or political subdivision of the state empowered by law to appropriate and to deliver water to water users.

(f) "Elector" means any elector of the county qualified under the laws of the State of California to vote in the county at general elections.

(g) "Groundwater" means water beneath the surface of the ground and within the zone of saturation, below the water table, whether or not flowing through known and definite channels.

(h) "Operate" includes use, maintenance, and repair.

(i) "President" means the president of the board of directors.

(j) "Produce" means to pump or divert water.

(k) "Producer" means a person or entity that produces water.

(*l*) "Secretary" means the secretary of the board of directors.

(m) "State of California" includes the State of California and all bureaus, commissions, divisions, departments, boards, agencies and officers of the executive branch of the state, and all committees of the Legislature of the State of California.

(n) "United States" means and includes the United States of America and all bureaus, commissions, divisions, departments, boards, agencies and officers of the executive branch thereof, and all committees of the Congress of the United States of America.

(o) "Water-producing facility" means any device or method, mechanical or otherwise, for the production of water from the groundwater supplies within the areas designated by the agency.

(p) "Water year" means October 1 of one calendar year to September 30 of the following calendar year.

(q) "Work" or "works" includes, but is not limited to, dams and dam sites, reservoirs and reservoir sites, sinking basins, groundwater replenishment facilities, watershed improvement facilities, ditches, laterals, flumes, pipelines, conduits, pumps, pumping plants, filters, wells, and, without limitation, all other facilities useful in the control, conservation, reclamation, diversion and transmission of water, and all land, property, franchises, easements, rights-of-way, and privileges necessary or useful to operate or maintain any of the foregoing.

SEC. 3. Section 15.2 is added to the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959), to read:

Sec. 15.2. The agency may apply for, and accept, grants to pay for the construction, operation, maintenance, or improvement of groundwater management facilities.

SEC. 4. Section 46 is added to the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959), to read:

Sec. 46. For the purpose of implementing the judgment of the Superior Court in and for the County of Riverside in City of Barstow, et al. v. City of Adelanto, et al. (Case Number 208568), the agency may do any of the following:

(a) Employ administrative personnel, engineering, legal, accounting, or other services and consulting assistants that the agency determines to be appropriate.

(b) Adopt regulations that do all of the following:

(1) Regulate the amounts of production.

(2) Identify approved devices or methods to measure or estimate production.

(3) Require any producer who provides piped water for human consumption to more than five service connections, within three years after the date of the adoption of the regulations, to install a water meter on each service connection.

(4) Set forth the procedures and schedules applicable to any assessment imposed pursuant to Section 47. The regulations shall require the agency to hold a noticed public hearing prior to imposing or increasing that assessment. The agency shall include in the public notice all of the following information:

(A) The amount of the proposed assessment or increase.

(B) The reason for the proposed assessment or increase.

(C) The basis on which the proposed assessment or increase was calculated.

(D) The method and frequency of collection of the assessment.

(E) The length of time for which, and the property on which, the proposed assessment or increase is to be imposed.

(c) Install, operate, and maintain wells, measuring devices, or meters necessary to monitor streamflow, precipitation, and groundwater levels and to obtain necessary data.

(d) Encourage appropriate regulatory agencies to enforce reasonable water quality regulations affecting groundwater supplies within the district, including the regulation of solid and liquid waste disposal.

(e) Maintain a current list of producers for the purposes of notifying them of the actions of the agency.

(f) Borrow money in anticipation of the receipt of the proceeds of assessments in an amount not to exceed the annual amount of assessments imposed but not collected.

(g) Require each producer to submit to the agency, pursuant to procedures to be established by the agency, a report that includes the total production of the producer for each reporting period rounded off to the nearest tenth of an acre-foot, and any additional information and supporting documentation that the agency may

require.

SEC. 5. Section 47 is added to the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959), to read:

Sec. 47. (a) The agency may impose, by resolution or ordinance, assessments or fees on each producer, in accordance with the procedures and schedules set forth in the regulations adopted pursuant to this section, for the purpose of implementing the judgment of the Superior Court in and for the County of Riverside in City of Barstow, et al. v. City of Adelanto, et al. (Case Number 208568) or as the agency determines to be necessary.

(b) The agency shall set forth the purpose of any fee or assessment imposed pursuant to this section.

(c) A resolution or ordinance proposed to be adopted pursuant to this section shall be set for public hearing not less than 10 days prior to the hearing, with notice pursuant to Section 6061 of the Government Code. Notice shall be mailed to any person requesting notice.

(d) The agency shall prepare and make available for public inspection, not less than 14 days prior to a hearing regarding a proposed resolution or ordinance, information regarding the amount of any proposed fee or assessment and its purpose.

(e) The agency shall adopt rules and regulations for the imposition of fees and assessments pursuant to this section.

(f) A fee or assessment imposed pursuant to this section shall take effect immediately upon the date of adoption, or upon a subsequent date as set by the agency, and shall be collected pursuant to the rules and regulations adopted pursuant to subdivision (e).

SEC. 6. Section 48.3 is added to the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959), to read:

Sec. 48.3. (a) (1) Except as specified in paragraph (2), the amount of an unpaid fee or assessment imposed pursuant to Section 47 constitutes a lien on that property as of the same time and in the same manner as does the tax lien securing annual county ad valorem property taxes.

(2) If, during the year preceding the date on which the first installment of real property taxes which evidence the charges appears on the roll, any real property to which the lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien or bona fide encumbrance for value has been created and attached thereto, a lien shall not be imposed on that property.

(b) The amount of any unpaid fee or assessment imposed pursuant to Section 47 shall be collected in the same manner, by the same persons, and at the same time as, together and not separately from, the next collection of annual county ad valorem property taxes imposed upon the real property.

(c) The amount of compensation to the county for collecting unpaid fees and assessments pursuant to this section shall be fixed by agreement between the board of supervisors of the county and the board.

SEC. 7. Section 48.5 is added to the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959), to read:

Sec. 48.5. (a) If the agency determines that fees or assessments imposed pursuant to Section 47 are unpaid, the agency may, at its discretion, secure the amount of those fees or assessments by filing a certificate in the office of the county recorder in the county in which the real property subject to those fees or assessments is located, stating the delinquent amount, and the name and address of a person liable for that amount.

(b) From the date of recordation of the certificate, the amount of an unpaid fee or assessment, together with any penalty or interest thereon, constitutes a lien on all real property within the county owned, or later acquired prior to expiration of the lien, by the person liable for the unpaid fee or assessment.

(c) A lien shall continue for 10 years from the date of filing the initial certificate of record or, subsequently, for 10 years from the date of filing a certificate to extend the lien. A lien may be extended by filing a new certificate in the office of the county recorder of any county, which shall from that date also apply to any additional real property in the recording county that belongs to the person liable for the unpaid fee or assessment.

(d) A lien shall have the force and effect, and the priority, of a judgment lien.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 506

An act to amend Section 48321.5 of the Education Code, relating to education.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 48321.5 of the Education Code is amended to read:

48321.5. (a) In every case in which a minor pupil has been referred to it under Section 48263, each county or local school attendance review board may, for the purpose of making a proper disposition of the referral, issue subpoenas pursuant to the

procedures provided in Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of the Code of Civil Procedure and subject to subdivision (f), or may request the juvenile court having jurisdiction to issue subpoenas, requiring the production of pertinent or material written information or the attendance of any of the following persons:

(1) The minor.

(2) The minor's parents, guardians, or other person having control of the minor.

(3) The school authority referring the minor.

(4) Any other person who has pertinent or material information concerning the matter.

(b) The juvenile court may issue subpoenas requiring the attendance of witnesses or the production of pertinent or material written information, subject to Section 1985 of the Code of Civil Procedure.

(c) Enforcement of a subpoena issued by a county or local school attendance review board is within the jurisdiction of the juvenile court. The juvenile court does not have jurisdiction to order detention in any secure facility or other confinement for failure to comply with a subpoena issued pursuant to this section.

(d) Nothing in this section shall be construed to authorize a county or local school attendance review board to issue a subpoena for the production of written materials or the attendance of any person except as specifically provided in subdivision (a) with respect to the limited purpose of making a proper disposition of the referral of a minor pupil made pursuant to Section 48263.

(e) Nothing in this section shall be construed to authorize a county or local school attendance review board to issue a subpoena or request a subpoena to be issued for the production of written materials or the attendance of any person if it is verified that the minor pupil is enrolled and in regular attendance in a private school maintaining kindergarten or any of grades 1 to 12, inclusive, that has filed an affidavit pursuant to Sections 33190 and 48222 of the Education Code.

(f) A county or local school attendance review board shall not issue a subpoena that includes a request for production of written materials, but may request a juvenile court having jurisdiction to issue a subpoena for production of written materials pursuant to subdivision (a).

CHAPTER 507

An act to amend Sections 22515 and 23008 of the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. It is the intent of the Legislature that the State Teachers' Retirement System address the issue of compensation and service credit equity for adult school teachers and make recommendations to the Legislature during the 1995 Regular Session of the Legislature.

SEC. 2. Section 22515 of the Education Code is amended to read:

22515. Persons excluded from membership in Sections 22602, 22603, and 22604 may elect membership in the system at any time while employed in a substitute or part-time position that does not qualify for membership in this system. The election is irrevocable, shall be in writing, and shall be filed in the office of this system prior to submission of contributions.

SEC. 3. Section 23008 of the Education Code is amended to read:

23008. (a) If more or less than the required contributions specified in this part and Section 44987 are paid to the system based on any salary payment to a member, proper adjustments shall be made by the county superintendent or other employing agency on a monthly report within 60 days of discovery or of notification by the system and any refunds shall be made to the member within the same time period by the employing agency.

(b) The board may assess penalties for late or improper adjustments. These penalties shall be no more than the regular interest as defined in Section 22142. The penalty so assessed shall be deemed interest earned in the year in which it was received.

(c) If a required report contains erroneous information and the system, acting in good faith, disburses funds based on that information, the county superintendent or other employing agency who submitted the report shall reimburse the system in full for the amount of the disbursement. Reimbursement shall be made immediately upon notification by the system.

CHAPTER 508

An act to amend Sections 6032, 6033, 6034, 6035, 6036, 6039, 6040, 6041, 6042, and 6043 of, and to add Sections 6033.5 and 6043.2 to, to add and repeal Article 7.1 (commencing with Section 6045) to Chapter 9 of Part 1 of Division 4 of, and to repeal Article 7 (commencing with Section 6031) of Chapter 9 of Part 1 of Division 4 of, the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 6032 of the Food and Agricultural Code is amended to read:

6032. As used in this article "handler" means any person that engages in the operation of selling, marketing, or processing any of the crops vulnerable to damage from curly top virus, as covered by this chapter, which he or she has purchased, or acquired from a producer or which he or she is marketing, selling or processing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise. A producer-handler is a producer who operates as a handler as to any such crop produced by him or her. Every producer or producer-handler of tomatoes, sugar beets, melons, beans, cucumbers, spinach, peppers, and other agricultural crops susceptible to curly top virus as determined by the secretary, shall pay to the secretary an assessment on all those crops sold or delivered by him or her to a handler or, in the case of a producer-handler, on those crops marketed by the producer-handler. The full amount of the assessment shall be collected from the producer by the handler at the point and time that the crop is purchased or received by the handler as provided by regulations of the secretary.

SEC. 2. Section 6033 of the Food and Agricultural Code is amended to read:

6033. Except as otherwise provided in this article, the assessment collected from producers by handlers or due from producer-handlers shall be paid by the handlers or producer-handlers to the secretary as provided by regulations of the secretary.

SEC. 3. Section 6033.5 is added to the Food and Agricultural Code, to read:

6033.5. (a) Any assessment that is imposed on the producer pursuant to this article is a personal debt of the producer.

(b) Every handler or producer-handler is personally liable for the payment of the assessment. The failure of the handler or producer-handler to collect the assessment does not exempt the handler or producer-handler from liability, and does not relieve the producer from the obligation to pay the assessment.

(c) Any producer, handler, or producer-handler who fails to file a return or pay the assessment or otherwise comply with Section 6033 shall pay a penalty of 10 percent of the amount of the assessment determined to be due, and, in addition, shall pay 1.5 percent interest per month on the unpaid balance of the assessment and the penalty.

SEC. 4. Section 6034 of the Food and Agricultural Code is amended to read:

6034. For the purpose of assessment, the following districts are established: District I, Imperial and Riverside Counties; District II, Kern, Kings, Tulare, Fresno, Madera, Merced, Stanislaus, and San Joaquin Counties, and that portion of Los Angeles County lying north of the San Gabriel Mountains; District III, Sacramento, Solano, Yolo, Placer, Sutter, Yuba, Colusa, Butte, and Glenn Counties; District IV, Alameda, Contra Costa, Monterey, San Benito, San Luis Obispo, Santa Clara, Santa Cruz, and Santa Barbara Counties; additional areas of the state may be established in districts by regulation of the secretary if the secretary finds crops in any such district are subject to damage from curly top virus and that any such district is necessary to accomplish the purposes of this article.

SEC. 5. Section 6035 of the Food and Agricultural Code is amended to read:

6035. The secretary may establish the rate of assessment by district and crop and may adjust the assessment rate from time to time, whenever necessary as provided in Section 6036.

SEC. 6. Section 6036 of the Food and Agricultural Code is amended to read:

6036. The assessment rate may vary from district to district and from crop to crop based on the degree of vulnerability to damage from curly top virus experienced by those crops in those districts. The rates may also vary in accordance with the protection afforded to those crops in those districts. Any rate or rates established shall be set by regulation. The assessments shall be in total amount sufficient to reimburse the secretary, and whenever feasible, shall not exceed 65 percent of the expenditure by the department in carrying out the beet leafhopper control program.

SEC. 7. Section 6039 of the Food and Agricultural Code is amended to read:

6039. The secretary shall appoint a Curly Top Virus Control Board consisting of nine members. The membership shall consist of at least one representative of each of the primary crop commodities assessed and shall include representation from each of the districts assessed. The secretary may appoint one additional member on the board, who shall be a public member. The secretary shall appoint one member of the board to serve as chairperson.

Upon the secretary's request, the board shall submit to the secretary the names of three or more natural persons, each of whom shall be a citizen and resident of this state and not a producer, shipper, or processor or financially interested in any producer, shipper, or processor, for appointment by the secretary as a public

member of the board. The secretary may appoint one of the nominees as the public member on the board. If all nominees are unsatisfactory to the secretary, the board shall continue to submit lists of nominees until the secretary has made a selection. Any vacancy in the office of the public member of the board shall be filled by appointment by the secretary from the nominee or nominees similarly qualified submitted by the board. The public member of the board shall represent the interests of the general public in all matters coming before the board and shall have the same voting and other rights and immunities as other members of the board.

SEC. 8. Section 6040 of the Food and Agricultural Code is amended to read:

6040. Board members shall serve at the pleasure of the secretary.

SEC. 9. Section 6041 of the Food and Agricultural Code is amended to read:

6041. (a) Except as provided in subdivision (b), the board shall be advisory to the secretary and may make recommendations on all matters pertaining to this article including, but not limited to, the annual budget, the adoption, modification, and repeal of regulations and procedures, the use of funds for research, and necessary assessments required to accomplish the purposes of this article as provided in Section 6031.

(b) The secretary shall accept the recommendations of the board if the secretary determines that the recommendations are practicable and in the interest of the industry and the public. The secretary, within 30 days of the decision, shall provide the board with a written statement of reasons for his or her decision if the secretary does not accept a recommendation of the board.

SEC. 10. Section 6042 of the Food and Agricultural Code is amended to read:

6042. The board shall meet at the call of its chairman or the secretary or at the request of any three members of the board. The board shall meet at least once a year. Members of the board shall be allowed per diem and mileage in accordance with rules of the Department of Personnel Administration for attendance at meetings and other board activities authorized by the board and approved by the secretary.

SEC. 11. Section 6043 of the Food and Agricultural Code is amended to read:

6043. Upon termination of this article, any remaining funds received pursuant to this article shall be refunded on a pro rata basis to all persons from whom assessments were collected during the 12-month period preceding the date of termination, unless the secretary finds the amounts so returnable are so small as to make impractical computation and remitting of refunds. If the secretary makes such a finding, the funds may be used for beet leafhopper control or research activities.

SEC. 12. Section 6043.2 is added to the Food and Agricultural Code, to read:

6043.2. This article shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 13. Article 7.1 (commencing with Section 6045) is added to Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, to read:

Article 7.1. Operation and Research Funding

6045. As used in this article:

(a) Until such time as a referendum is held and a board is appointed pursuant to Section 6045.9, "board" means the Curly Top Virus Control Board appointed pursuant to Section 6039.

(b) "District" means the districts established pursuant to Section 6034.

(c) "Handler," "producer," and "producer-handler," means these persons as defined by Section 6032.

6045.1. Upon implementation of this article, the board may declare itself to be a corporate body. The board may sue and be sued, contract and be contracted with, have and possess all of the powers of a corporation, and adopt a corporate seal. Copies of its proceedings, records, and acts, when certified by the secretary of the board and authenticated with the corporate seal, shall be admissible in evidence in all courts of the state, and shall be prima facie evidence of the truth of all statements therein.

6045.2. If approved by the board, all moneys received from any person from the assessments levied under the authority of this article, and any funds transferred from the Department of Food and Agriculture Fund, shall be deposited in such banks approved by the Department of Finance as the board may designate and shall be disbursed by order of the board through agents it designates for that purpose. Any agents shall be bonded by a fidelity bond in an amount determined by the board, executed by a surety company authorized to transact business as such in the State of California, in favor of the board, conditioned upon the faithful performance of their duties and, on the strict accounting for all funds of the board. Upon implementation of this article, any remaining balance in the Department of Food and Agriculture Fund received pursuant to Article 7 (commencing with Section 6031) shall be transferred to the board to the extent not encumbered for services rendered by the department for expenditure in accordance with this article, and for that purpose those funds are hereby appropriated to the board.

6045.3. Upon implementation of this article, the powers and duties of the board shall also include, but are not limited to, all of the following:

(a) To adopt, and from time to time, alter, rescind, modify, and amend all proper and necessary rules, regulations, and orders for carrying out this article and for exercising its powers and the performance of its duties, including regulations governing appeals

from any regulation or order of the board. Any rule, regulation, or order adopted pursuant to this article is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Notwithstanding any provision of Article 7 (commencing with Section 6031) to the contrary, to administer and enforce Article 7 (commencing with Section 6031), and to do and perform all acts and exercise all powers incidental to, or in connection with, or deemed reasonably necessary, proper, or advisable to effectuate the purposes of Article 7 (commencing with Section 6031).

(c) To employ a manager to serve, at the pleasure of the board, as president and chief executive officer of the board, and to employ such temporary personnel, and, with the consent of the Attorney General, legal counsel, as may be necessary to carry out Article 7 (commencing with Section 6031) and this article.

(d) To establish offices and incur expense, and to create such liabilities and borrow such funds in advance of receipt of assessments as may be necessary, in the opinion of the board, for the proper administration and enforcement of Article 7 (commencing with Section 6031) and this article, and the performance of its duties.

(e) To conduct, and contract with others to conduct, scientific research, including the study, analysis, dissemination, and accumulation of the information obtained from that research. In connection with that research, the board may accept contributions of, or match, private, state, or federal funds that may be available for these purposes, and employ or make contributions of funds to other persons or state or federal agencies conducting that research.

(f) To publish and distribute, without charge, a bulletin or other communication for dissemination of information to growers and other industry members.

6045.4. If the board proposes to implement this article, a referendum vote shall be held by the secretary. Any board decision requesting a referendum to implement this article shall be transmitted to the secretary by June 30th of the year preceding the implementation of this article. The secretary shall, within 90 days after receipt of the board's decision, create a list of producers and producer-handlers subject to this article. The secretary shall mail a copy of a notice to all handlers of the commodities described in Section 6032 informing the handlers that they are required to file with the secretary within 30 days from the date of the notice, a report, properly certified, which shows all of the following:

(a) The correct name and address of every producer of the commodity that may be directly affected by the referendum from whom the handler received the commodity in the marketing season next preceding the filing of the report or the current marketing season if the harvest and delivery of the commodity to handlers is complete.

(b) The secretary may also require all handlers to report quantities of the commodity that were received by the handler from

each producer in the marketing season next preceding the filing of the report or the current marketing season if the harvest and delivery of the commodity to handlers is complete.

6045.5. A 60-day notice of referendum and opportunity to vote shall be mailed to all producers or producer-handlers.

6045.6. In the referendum conducted by the secretary, every producer or producer-handler shall have one vote.

6045.7. All costs for organizing and administering a referendum shall be paid from the funds deposited in the Department of Food and Agriculture Fund pursuant to Sections 6037 and 6038, and for that purpose those funds are hereby appropriated to the department.

6045.8. Upon conclusion of the referendum, if the referendum is approved, the secretary shall issue an order authorizing implementation of this article effective January 31 next following the referendum. A referendum shall be approved if a total of 40 percent of the producers and producer-handlers certified under Section 6045.4 vote and either of the following conditions are met:

(a) Not less than a total of 65 percent of the producers and producer-handlers who voted in that referendum, voted in favor, and that those producers and producer-handlers so voting represent at least a majority (51 percent) of the producing acreage of all producers and producer-handlers who voted in that referendum.

(b) At least a majority (51 percent) of those producers or producer-handlers who voted in the referendum voted in favor and those producers or producer-handlers so voting represent not less than 65 percent of the producing acreage of all producers and producer-handlers who voted in that referendum.

6045.9. Upon approval of the referendum all of the following shall occur:

(a) The secretary shall request nominations for the board members.

(b) Nominations may be made by producers or producer-handlers certified under Section 6045.4.

(c) The board shall be appointed by the secretary from among those persons nominated and shall consist of nine members whose terms shall be staggered. Members of the board shall be allowed per diem and mileage in accordance with Section 6042.

(d) Each district shall be represented by at least one member and there shall be at least one member from each commodity group. At least four members shall be from the San Joaquin Valley. The secretary may appoint one additional member of the board, who shall be a public member. The term of an appointment shall not exceed five years.

6045.10. Upon implementation of this article, the board shall do all of the following:

(a) After appointment of the initial board, the board shall develop procedures for nominations for vacancies on the board.

(b) The board shall provide an annual pest management plan to the secretary by September 1 of each year for the succeeding 12

month period. The board shall report to the secretary all violations or orders to take corrective action issued by any federal, state, or local regulatory agency.

(c) The board may annually assess handlers or producers, as determined pursuant to paragraph (1) of subdivision (d), an amount not to exceed .2 percent of the producer's gross dollar value from the previous year's crop. If the board establishes an assessment pursuant to this section, the director may not establish an assessment pursuant to Article 7 (commencing with Section 6031).

(d) The board shall develop, by regulation, a procedure for the collection of assessments under this article, and shall include provisions governing both of the following:

(1) A provision that specifies that the assessment which may be imposed pursuant to subdivision (c) may be collected from either producers or handlers.

(2) A provision that specifies that a penalty of 1½ percent per month may be imposed on the amount of any unpaid assessment due and payable 30 days after billing.

6046. Assessments collected under this article shall be used exclusively for operation, research, and related administrative expenses.

6046.1. (a) The secretary may require the board to correct or cease any activity or function that is determined by the secretary not to be in the public interest or that is in violation of either Article 7 (commencing with Section 6031) or this article.

(b) If the board refuses or fails to cease these activities or functions or to make corrections required by the secretary, the secretary may, upon written notice, suspend all or a portion of the activities or functions of the board until the time that the board ceases or corrects the activities or functions, as required by the secretary.

(c) Any action of the board in violation of the written notice shall have no legal effect. The secretary, to the extent feasible, shall issue the written notice prior to the board entering into any contractual relationship affecting existing or proposed activities or functions that are the subject of the written notice.

(d) At the same time the written notice described in subdivision (b) is provided to the board, the secretary shall notify the board in writing of the specific acts that the secretary determines are not in the public interest or in violation of either Article 7 (commencing with Section 6031) or this article, the secretary's reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and the secretary's recommendation with respect to any action that will make the activities or functions acceptable.

6046.2. The state is not liable for the acts of the board or its contracts. Payment of all claims arising pursuant to this article are limited to the funds collected by the board. No member, employee, or agent of the board is personally liable for the contracts of the board and no such person is responsible individually to any handler,

producer, or producer-handler, or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member, employee, or agent of the board is responsible individually for any act or omission of any other member, employee, or agent of the board. Liability is several and not joint, and no member, employee, or agent of the board is liable for the default of any other member, employee, or agent of the board.

6046.3. The board shall keep accurate books, records, and accounts of all its dealings that shall be open to the department upon demand, and subject to an annual audit by an auditing firm selected by the board with the concurrence of the secretary. A summary of the audit shall be reported to all producers and a copy of the summary shall also be submitted to the department. In addition, the secretary may, as he or she determines necessary, conduct or cause to be conducted a fiscal and compliance audit of the board.

6046.4. This article shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

CHAPTER 509

An act to amend Section 1708.7 of the Civil Code, relating to exemplary damages.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 1708.7 of the Civil Code is amended to read:

1708.7. (a) A person is liable for the tort of stalking when the plaintiff proves all the following elements of the tort:

(1) The defendant engaged in a pattern of conduct the intent of which was to follow, alarm, or harass the plaintiff. In order to establish this element, the plaintiff shall be required to support his or her allegations with independent corroborating evidence.

(2) As a result of that pattern of conduct, the plaintiff reasonably feared for his or her safety, or the safety of an immediate family member. For purposes of this paragraph, "immediate family" means a spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any person who regularly resides, or, within the six months preceding any portion of the pattern of conduct, regularly resided, in the plaintiff's household.

(3) One of the following:

(A) The defendant, as a part of the pattern of conduct specified in paragraph (1), made a credible threat with the intent to place the plaintiff in reasonable fear for his or her safety, or the safety of an

immediate family member and, on at least one occasion, the plaintiff clearly and definitively demanded that the defendant cease and abate his or her pattern of conduct and the defendant persisted in his or her pattern of conduct.

(B) The defendant violated a restraining order, including, but not limited to, any order issued pursuant to Section 527.6 of the Code of Civil Procedure, prohibiting any act described in subdivision (a).

(b) For the purposes of this section:

(1) "Pattern of conduct" means conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "pattern of conduct."

(2) "Credible threat" means a verbal or written threat or a threat implied by a pattern of conduct or a combination of verbal or written statements and conduct made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family.

(3) "Harass" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, torments, or terrorizes the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person.

(c) A person who commits the tort of stalking upon another is liable to that person for damages, including, but not limited to, general damages, special damages, and punitive damages pursuant to Section 3294.

(d) In an action pursuant to this section, the court may grant equitable relief, including, but not limited to, an injunction.

(e) The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

(f) This section shall not be construed to impair any constitutionally protected activity, including, but not limited to, speech, protest, and assembly.

CHAPTER 510

An act to add Sections 42291.5 and 42293 to, and to repeal and add Section 42303 of, the Education Code, relating to school operations.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 42291.5 is added to the Education Code, to read:

42291.5. (a) For the purposes of this article, in a school district with fewer than three schoolbuses, a schoolbus shall be considered disposed of for the purposes of replacement if the schoolbus is designated a temporary schoolbus. A temporary schoolbus shall be limited to annual mileage of no more than 10 percent of the average annual mileage in that district over the prior five years.

(b) A schoolbus that is designated a temporary schoolbus under subdivision (a), is no longer eligible for replacement pursuant to this article, Article 4.7 (commencing with Section 42300), or Part 10.7 (commencing with Section 17910).

(c) After a schoolbus has been designated as temporary pursuant to subdivision (a), and before it can be used as a schoolbus, the school district must be in compliance with all relevant provisions of the Vehicle Code and Title 13 of the California Code of Regulations.

SEC. 2. Section 42293 is added to the Education Code, to read:

42293. For the 1995–96 fiscal year, the State Department of Education shall collect and rank the schoolbus replacement applications for each of the 1995–96 and 1996–97 fiscal years. The department shall notify each school district of its rank and shall use that rank for the allocation of any funds appropriated pursuant to this article in the 1995–96 or 1996–97 fiscal year. Commencing with the 1996–97 fiscal year and each year thereafter, the department shall request schoolbus replacement applications for the next fiscal year and shall use those applications for the allocation of any funds to be appropriated for the next fiscal year.

SEC. 3. Section 42303 of the Education Code is repealed.

SEC. 4. Section 42303 is added to the Education Code, to read:

42303. Notwithstanding the provisions of this article, Article 4.5 (commencing with Section 42290), Part 10.7 (commencing with Section 17910), or any other law, a school district that receives funding for the replacement of a schoolbus may sell that schoolbus to another school district in this state if all of the following conditions are satisfied:

(a) The purchasing school district is replacing a schoolbus that is in service at the time of the sale and has not been designated a temporary schoolbus pursuant to subdivision (a) of Section 42291.5.

(b) The schoolbus being replaced by the purchasing school

district is older than the schoolbus that is the subject of the sale.

(c) The schoolbus being replaced is not sold to another school district.

(d) The purchasing school district by a resolution from its governing board, holds the state and the selling school district harmless for any liability that may result from the schoolbus that is the subject of the sale.

(e) The proceeds from the sale of a schoolbus shall be used by the selling district for home-to-school transportation purposes.

(f) After the districts agree to the sale, but prior to the sale being finalized, the schoolbus being sold must be in compliance with all relevant provisions of the Vehicle Code and Title 13 of the California Code of Regulations.

CHAPTER 511

An act to add Section 42282.1 to the Education Code, relating to the Death Valley Unified School District.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. The Legislature finds and declares that the Death Valley Unified School District is a large district that serves pupils from a wide and varied geographic area. There are only two schools in the school district. Because those schools are over 60 miles apart, it is impossible to combine those schools for the purpose of meeting the requirements for necessary small school apportionments set forth in subdivision (b) of Section 42282 of the Education Code.

SEC. 2. Section 42282.1 is added to the Education Code, to read:

42282.1. (a) Notwithstanding Section 42282, or any other provision of law, each necessary small school in the Death Valley Unified School District shall qualify for the apportionment specified in subdivision (b) of Section 42282 if that district has an average daily attendance of 21 or more and less than 51, exclusive of pupils attending the 7th and 8th grades of a junior high school, and for which school at least two teachers were hired full-time for more than one-half of the days schools were maintained.

(b) It is the intent of the Legislature not to provide a special allowance to the Death Valley Unified School District for one of its schools by future legislation if the average daily attendance at the school is 18 or less.

SEC. 3. The Legislature finds and declares that due to the unique circumstances in Section 1 of this act regarding the Death Valley Unified School District a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California

Constitution.

CHAPTER 512

An act to amend 39610 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 39610 of the Health and Safety Code is amended to read:

39610. (a) Not later than December 31, 1989, the state board shall identify each air basin, or subregion thereof, in which transported air pollutants from upwind areas outside the air basin, or subregion thereof, cause or contribute to a violation of the state ambient air quality standard for ozone, and shall identify the district of origin of the transported air pollutants based upon the preponderance of available evidence. The state board shall identify and determine the priorities of information and studies needed to make a more accurate determination, including, but not limited to, emission inventories, pollutant characterization, ambient air monitoring, and air quality models.

(b) The state board shall, in cooperation with the districts, assess the relative contribution of upwind emissions to downwind ozone ambient air pollutant levels to the extent permitted by available data, and shall establish mitigation requirements commensurate with the level of contribution. In assessing the relative contribution of upwind emissions to downwind ozone ambient air pollutant levels, the state board shall determine if the contribution level of transported air pollutants is overwhelming, significant, inconsequential, or some combination thereof. Any determination by the state board shall be based upon a preponderance of the available evidence.

(c) The state board shall make every reasonable effort to supply air pollutant transport information to heavily impacted districts prior to the development of plans to attain the state ambient air quality standards, shall consult with affected upwind and downwind districts, and shall adopt its findings at a public hearing.

(d) The state board shall review and update its transport analysis at least once every three years.

(e) The state board shall conduct appropriate studies to carry out its responsibilities under this section.

CHAPTER 513

An act to amend Section 56221 of the Education Code, relating to vehicles.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. The Legislature recognizes that disabled pupils are entitled to safe and secure transportation. It is the intent of the Legislature, therefore, that schoolbuses be properly equipped with restraining devices to safely transport pupils who are confined to wheelchairs. It is also the intent of the Legislature that no school district deny transportation to any pupil due to the incompatibility of a wheelchair and bus securement systems.

SEC. 2. Section 56221 of the Education Code is amended to read:

56221. (a) Each entity providing special education under this part shall adopt policies for the programs and services it operates, consistent with agreements adopted pursuant to subdivision (b) or (c) of Section 56170, or Section 56220. The policies need not be submitted to the superintendent.

(b) The policies shall include, but not be limited to, all of the following:

(1) Nonpublic, nonsectarian services, including those provided pursuant to Sections 56365 and 56366.

(2) Review, at a regular education or special education teacher's request, of the assignment of an individual with exceptional needs to his or her class and a mandatory meeting of the individualized education program team if the review indicates a change in the pupil's placement, instruction, related services, or any combination thereof. The procedures shall indicate which personnel are responsible for the reviews and a timetable for completion of the review.

(3) Procedural safeguards pursuant to Chapter 5 (commencing with Section 56500).

(4) Resource specialists pursuant to Section 56362.

(5) Transportation, where appropriate, which describes how special education transportation is coordinated with regular home-to-school transportation. The policy shall set forth criteria for meeting the transportation needs of special education pupils. The policy shall include procedures to ensure compatibility between mobile seating devices, when used, and the securement systems required by Federal Motor Vehicle Safety Standard No. 222 (49 C.F.R. 571.222) and to ensure that schoolbus drivers are trained in the proper installation of mobile seating devices in the securement systems.

(6) Caseloads pursuant to Chapter 4.45 (commencing with

Section 56440) of Part 30. The policies, with respect to caseloads, shall not be developed until guidelines or proposed regulations are issued pursuant to Section 56441.7. The guidelines or proposed regulations shall be considered when developing the caseload policy. A statement of justification shall be attached if the local caseload policy exceeds state guidelines or proposed regulations.

(c) The policies may include, but are not limited to, provisions for involvement of district and county governing board members in any due process hearing procedure activities conducted pursuant to, and consistent with, state and federal law.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 514

An act to amend Sections 77933, 77935, 77963, 77988, 77989, 77995, 77997, 78004, and 78006 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 77933 of the Food and Agricultural Code is amended to read:

77933. Any producer member and his or her alternate member on the commission shall be an individual producer or an authorized representative of a producer who has a financial interest in producing, or causing to be produced, flowers for market. Qualifications of producer members and their alternate members shall be maintained during their entire term of office.

SEC. 2. Section 77935 of the Food and Agricultural Code is amended to read:

77935. (a) The term of office of all members and alternate members of the commission, except ex officio members, is three years commencing in the month of December prior to the beginning of the marketing year in the year of their election and until qualified

successors are elected. However, with respect to the election of producer members in the 1993 marketing year, one member from each district specified in subdivision (b) of Section 77925 shall serve for one year, one member shall serve for two years, and one member shall serve for three years, with the determination of the term of each member from each district to be made in accordance with a procedure adopted by the commission with the concurrence of the secretary.

(b) The terms of office of each member and alternate member of the commission shall be limited to three consecutive terms. However, any term of less than three years served by a member or alternate member pursuant to subdivision (a) shall not be counted as one of the three consecutive terms.

SEC. 3. Section 77963 of the Food and Agricultural Code is amended to read:

77963. The commission and the secretary shall keep confidential and shall not disclose, except when required by court order in a judicial proceeding, all lists of producers in their possession.

SEC. 4. Section 77988 of the Food and Agricultural Code is amended to read:

77988. (a) The commission may specify, by regulation, the conditions under which proprietary information obtained from producers may be disclosed. Otherwise, all proprietary information obtained by the commission or the secretary from producers is confidential and shall not be disclosed except when required by court order in a judicial proceeding.

(b) Information on volume shipments, product value, and any other related information that is required for reports to governmental agencies; financial reports to the commission or aggregate sales and inventory information; and any other information that the commission requires that gives only totals, but excludes individual producer information, may be disclosed by the commission.

SEC. 5. Section 77989 of the Food and Agricultural Code is amended to read:

77989. Any assessment that is levied pursuant to this chapter is a personal debt of every producer so assessed. If the producer is a corporation, all of the directors and officers of the corporation in their capacity as individuals shall be included, and any liability for failure to collect or make payment of assessments for which a corporate producer may be subject pursuant to this chapter shall include identical liability upon each individual director or officer of the corporation.

SEC. 6. Section 77995 of the Food and Agricultural Code is amended to read:

77995. It is unlawful for any person to do any of the following:

(a) Fail or refuse to render a report, statement, or record required by the commission.

(b) Furnish a false report, statement, or record required by the

commission.

(c) When engaged in the handling of flowers, to fail or refuse to furnish the commission or its duly authorized agents, information concerning the names and addresses of persons from whom the flowers have been received and the quantity so received.

(d) Secrete, destroy, or alter records required to be kept under this chapter.

SEC. 7. Section 77997 of the Food and Agricultural Code is amended to read:

77997. (a) The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties and for obtaining injunctive relief or specific performance regarding this chapter and the regulations adopted pursuant to this chapter. A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated this chapter or any regulation of the commission, including, but not limited to, the nonpayment of assessments, the failure or refusal to submit required records to the commission, or the intentional submission of false information to the commission. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

(b) A writ of attachment shall be issued pursuant to Chapter 4 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified in Section 485.010 of the Code of Civil Procedure is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of that part, except that the showing of irreparable harm or inadequate remedy at law specified in Sections 526 and 527 is not required.

(c) Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from conducting any type of business involving flowers until there is full compliance and satisfaction of the judgment. Upon a favorable judgment for the commission, it is entitled to receive reimbursement for any reasonable attorney's fees and other actual related costs. Venue for these actions may be established at the domicile or place of business of the defendant or in the county of the principal office of the commission. The commission may be sued only in the county of its principal office.

SEC. 8. Section 78004 of the Food and Agricultural Code is amended to read:

78004. After the effective date of suspension, the operation of the commission shall be concluded and any and all funds remaining held by the commission and not required to defray the expenses of concluding and terminating operations of the commission may be returned upon a pro rata basis to all persons from whom assessments were collected in the immediately preceding marketing year.

However, if the commission finds that the amounts so returnable are so small as to make impractical the computation and remitting of the pro rata refund to these persons, any funds remaining after payment of all expenses of winding up and terminating operations may be withdrawn from the approved depository and paid into the Kee Kitayama Research Foundation, or an appropriate program conducted by the University of California or the California State University, another state agency, or a federal agency that deals with the purposes of this chapter. If no such program exists, the funds shall be paid into the State Treasury as unclaimed trust funds.

SEC. 9. Section 78006 of the Food and Agricultural Code is amended to read:

78006. Upon the suspension of the operation of this chapter, the commission shall appoint a committee of cut flower producers to oversee and manage the Kee Kitayama Research Foundation Account and, notwithstanding Section 78004, the funds in that account shall not be returned to the persons from whom collected.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 515

An act to amend Section 12804.14 of, and to add and repeal Section 12804.13 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 12804.13 is added to the Vehicle Code, to read:

12804.13. (a) The department may issue a restricted class A driver's license for the operation of any two-axle vehicle weighing 4,000 pounds or more unladen when towing a recreational boat trailer not exceeding 15,000 pounds gross vehicle weight rating or gross vehicle weight, if all of the following conditions are met:

(1) The combination of vehicles is used to transport a boat for recreational purposes or to and from a place of repair.

(2) The combination of vehicles is not used in the operations of a

common or contract carrier or in the course of any business endeavor.

(3) The towing of the trailer is not for compensation.

(4) The combination of vehicles and its load are not of a size that requires a permit pursuant to Section 35780.

(5) The combination of vehicles is operated by a driver possessing a valid driver's license.

(b) In lieu of a report of a medical examination required by Section 12804.9, an applicant for a restricted license issued pursuant to subdivision (a) shall, upon application and every two years thereafter, submit medical information on a form approved by the department.

(c) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1997, deletes or extends that date.

SEC. 2. Section 12804.14 of the Vehicle Code is amended to read:

12804.14. (a) The department may issue a restricted class A driver's license for the operation of any two-axle vehicle weighing 4,000 pounds or more unladen when towing a livestock trailer not exceeding 15,000 pounds gross vehicle weight rating or gross vehicle weight, if all of the following conditions are met:

(1) The vehicle is controlled and operated by a farmer.

(2) The vehicle is used to transport livestock to or from a farm.

(3) The vehicle is not used in the operations of a common or contract carrier.

(4) The vehicle is used within 150 miles of the person's farm.

(b) The requirements of subdivision (a) incorporate the guidelines published by the Federal Highway Administration in the Federal Register on September 26, 1988 (53 FR 37313). The department shall follow those guidelines in acting pursuant to this section as those guidelines now exist and as they are hereafter amended.

(c) In lieu of a report of a medical examination required by Sections 12804 and 12804.9, a licensed California driver applying for a restricted license issued pursuant to subdivision (a) shall, upon application and every two years thereafter, submit medical information on a form approved by the department.

(d) This section shall remain in effect only until January 1, 1996, and on that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

CHAPTER 516

An act to amend Section 28085 of the Vehicle Code, and to add Section 446.9 to the Penal Code, relating to vehicles.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 28085 of the Vehicle Code is amended to read:

28085. Any motor vehicle may be equipped with a theft alarm system which flashes the lights of the vehicle, or sounds an audible signal, or both, and which operates as follows:

(a) The system may flash any of the lights required or permitted on the vehicle.

(b) The system may sound an audible signal.

(c) No vehicle shall be equipped with a theft alarm system which emits the sound of a siren.

SEC. 2. Section 446.9 is added to the Penal Code, to read:

446.9. (a) Every person who possesses a code grabbing device, with the intent to use it in the commission of an unlawful act, is guilty of a misdemeanor.

(b) Every person who uses a code grabbing device to disarm the security alarm system of a motor vehicle, with the intent to use it in the commission of an unlawful act, is guilty of a misdemeanor.

(c) As used in this section, "code grabbing device" means a device that can receive and record the coded signal sent by the transmitter of a motor vehicle security alarm system and can play back the signal to disarm that system.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 517

An act to add Section 49547.5 to the Education Code, relating to children's nutrition.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 49547.5 is added to the Education Code, to read:

49547.5. (a) The Legislature finds and declares the following:

(1) Needy children rely upon school meals for supplemental nutrition that benefits their health, growth, and academic and social development.

(2) Existing federal law, Section 1761 of Title 42 of the United States Code, establishes the Summer Food Service Program. This program provides assistance to states to support the operation of nonprofit food service programs for needy children during those times of the year when free and reduced-price school meals are not available.

(3) In all but a handful of states, the Summer Food Service Program is administered by an appropriate state agency. However, in California, the United States Department of Agriculture administers the program.

(4) The Summer Food Service Program in California is severely underutilized. While about 1,600,000 children receive free and reduced-price school meals, only 122,300 (less than eight percent) participate in the Summer Food Service Program.

(5) State administration of the Summer Food Service Program will significantly help boost participation. Existing state law already requires the State Department of Education and the Superintendent of Public Instruction to provide leadership to encourage and support schools and public agencies to participate in the program.

(6) The State Department of Education presently administers within the state three closely related federal food programs: the National School Lunch Program, the School Breakfast Program, and the Child and Adult Care Food Program.

(b) The State Department of Education is hereby designated the state agency for purposes of the Summer Food Service Program (42 U.S.C. Sec. 1761) and shall submit to the Western Regional Office of the Food and Nutrition Service of the United States Department of Agriculture a program management and administration plan. If the plan is approved, the department shall manage and administer the program.

(c) The provisions of Sections 49536, 49550, and 49559 do not apply to the Summer Food Service Program, as set forth in this section.

CHAPTER 518

An act to amend Sections 5 and 12 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933), relating to water.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 5 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933) is amended to read:

Sec. 5. (a) Except as provided by resolution of the board of directors, the president shall sign all contracts on behalf of the district, and perform other duties that may be imposed on him or her by the board of directors or by this act. In the absence of or inability of the president to serve, the first vice president shall perform his or her duties. In the absence of or inability of both the president and the first vice president to serve, the second vice president shall perform the duties of the president.

(b) Except as provided by resolution of the board of directors, the general manager or secretary shall countersign all contracts on behalf of the district and perform other duties that may be imposed on him or her by the board of directors or by this act.

(c) The treasurer shall be responsible for the deposit and withdrawal of funds of the district. In the event the board of directors appoints a treasurer other than the county treasurer as provided in Section 4, the district shall file a certified copy of the resolution so appointing the treasurer with the county treasurer. The county treasurer shall thereupon deliver to the district all funds of the district on deposit with the county treasurer. The funds shall thereafter be deposited by the district in a bank or banks approved for deposit of public funds.

(d) The board of directors may, by resolution, adopt reasonable rules and regulations not inconsistent with this act for the administration and government of the affairs of the district, and alter them from time to time as conditions may require; they may also appoint appropriate officers or agents to represent them as directed in administering the affairs of the district, which officers or agents shall receive the compensation established by the board from time to time, and serve at the pleasure of the board. The board may require any of those officers or agents to furnish bond in the form and amount fixed by it.

SEC. 2. Section 12 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933) is amended to read:

Sec. 12. (a) An election shall be held on the first Tuesday after the first Monday in November of each even-numbered year, in those divisions of 1 to 7, inclusive, at which directors for the district shall be elected to fill the offices of the directors whose terms of office shall

expire at noon on the last Friday in that month, in accordance with the Uniform District Election Law.

(b) In Divisions 8, 9, and 10 of the district, the governing body of the city comprising each such division shall appoint the director to represent the division upon the board of directors, to serve a four-year term that expires at the same time as the terms of office of those elected directors whose terms of office expire that year. The terms of office of directors representing Divisions 8, 9, and 10 shall expire at noon on November 29, 1996. A director representing Division 8, 9, or 10 may be removed at any time and without cause by the majority vote of the appointing governing body.

(c) Vacancies occurring in any elective office shall be filled pursuant to Section 1780 of the Government Code. If the vacancy is that of an appointed director, the appointing body shall appoint a successor.

(d) Each director shall execute an official bond in an amount fixed by the board of directors that equals or exceeds one thousand dollars ($1,000). The bonds shall be filed with the secretary of the board of directors.

(e) In lieu of requiring each director to execute an official bond pursuant to subdivision (d), the district may provide fidelity insurance through master or blanket bonds, or other insurance approved by the board of directors.

(f) Premiums for bonds required by this act shall constitute a proper charge against the district.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 519

An act to amend Section 16429.1 of the Government Code, relating to the California State University.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 16429.1 of the Government Code is amended to read:

16429.1. There is in the State Treasury the Local Agency Investment Fund, which fund is hereby created. Notwithstanding

Section 13340, all money in the fund is hereby appropriated without regard to fiscal years to carry out the purpose of this section. The Controller shall maintain a separate account for each governmental unit having deposits in this fund.

Notwithstanding any other provisions of law, a local governmental official, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.

Notwithstanding any other provisions of law, an officer of any nonprofit corporation whose membership is confined to public agencies or public officials, or an officer of a qualified quasi-governmental agency, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.

Notwithstanding any other provision of law or of this section, a local agency, with the approval of its governing body, may deposit in the Local Agency Investment Fund proceeds of the issuance of bonds, notes, certificates of participation, or other evidences of indebtedness of the agency pending expenditure of the proceeds for the authorized purpose of their issuance. In connection with these deposits of proceeds, the Local Agency Investment Fund is authorized to receive and disburse moneys, and to provide information, directly with or to an authorized officer of a trustee or fiscal agent engaged by the local agency, the Local Agency Investment Fund is authorized to hold investments in the name and for the account of that trustee or fiscal agent, and the Controller shall maintain a separate account for each deposit of proceeds.

The local governmental unit, the nonprofit corporation, or the quasi-governmental agency has the exclusive determination of the length of time its money will be on deposit with the Treasurer.

The trustee or fiscal agent of the local governmental unit has the exclusive determination of the length of time proceeds from the issuance of bonds will be on deposit with the Treasurer.

The Local Investment Advisory Board shall determine those quasi-governmental agencies which qualify to participate in the Local Agency Investment Fund.

The Treasurer may refuse to accept deposits into the fund if, in the judgment of the Treasurer, the deposit would adversely affect the state's portfolio.

The Treasurer may invest the money of the fund in securities prescribed in Section 16430. The Treasurer may elect to have the money of the fund invested through the Surplus Money Investment Fund as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2.

Money in the fund shall be invested to achieve the objective of the fund which is to realize the maximum return consistent with safe and prudent treasury management.

All instruments of title of all investments of the fund shall remain in the Treasurer's vault or be held in safekeeping under control of the Treasurer in any federal reserve bank, or any branch thereof, or the Federal Home Loan Bank of San Francisco, with any trust company, or the trust department of any state or national bank.

Immediately at the conclusion of each calendar quarter, all interest earned and other increment derived from investments shall be distributed by the Controller to the contributing governmental units or trustees or fiscal agents, nonprofit corporations, and quasi-governmental agencies in amounts directly proportionate to the respective amounts deposited in the Local Agency Investment Fund and the length of time the amounts remained therein. An amount equal to the reasonable costs incurred in carrying out the provisions of this section, not to exceed a maximum of one-half of 1 percent of the earnings of this fund, shall be deducted from the earnings prior to distribution. The amount of this deduction shall be credited as reimbursements to the state agencies having incurred costs in carrying out the provisions of this section.

The Treasurer shall prepare for distribution a monthly report of investments made during the preceding month.

As used in this section, "local agency," "local governmental unit," and "local governmental official" includes a campus or other unit and an official, respectively, of the California State University who deposits moneys in funds described in Sections 89721, 89722, and 89725 of the Education Code.

CHAPTER 520

An act to amend Section 41865 of, and to add Sections 41865.1, 41865.2, 41865.3, 41865.4, 41865.5, and 41865.6 to, the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 41865 of the Food and Agricultural Code is amended to read:

41865. The committee shall be advisory to the secretary on all matters pertaining to quality standards for garlic and onions for dehydrating purposes. The committee may do any of the following:

(a) Recommend to the secretary the adoption or amendment of the quality standards for garlic or onions suitable for dehydration purposes.

(b) Recommend to the secretary administrative regulations that relate to methods and procedures of selecting samples of lots, loads,

or containers of garlic or onions for dehydrating purposes.

(c) Recommend to the secretary administrative regulations that relate to the methods and procedures for the determination of moisture content in deliveries of garlic or onions for dehydration purposes.

(d) Recommend to the secretary administrative regulations that relate to the administration and enforcement of this chapter.

(e) Recommend to the secretary administrative regulations concerning the place of inspection and location of inspection stations.

(f) Recommend to the secretary the institution and promotion of scientific research.

(g) Recommend to the secretary whether or not there shall be sampling and inspection for conditions not shown on the certificate of inspection for dehydrated garlic or onions.

(h) Advise the secretary on all matters pertaining to this chapter, including training and supervision of inspectors and the annual budget and revenue necessary to accomplish the purposes of this chapter.

SEC. 2. Section 41865.1 is added to the Food and Agricultural Code, to read:

41865.1. (a) In order to operate economically and reduce the expenses that may adversely impact persons subject to this chapter, the committee may, on or before January 15 of any year, request the secretary to contract with any government agency or private entity, to provide services, as determined by the secretary, to be necessary for carrying out the purposes of this chapter. Those services may include, but are not limited to, both of the following:

(1) Providing staff for inspection and research.

(2) Providing office space, equipment, and other necessary supplies.

(b) Notwithstanding subdivision (a), the secretary shall be responsible for the enforcement of this chapter, the establishment of enforcement procedures, and the uniformity, accuracy, and integrity of inspection.

SEC. 3. Section 41865.2 is added to the Food and Agricultural Code, to read:

41865.2. (a) The secretary may establish rules and procedures to be used by the government agency or private entity in administering this chapter. The procedures may include both of the following:

(1) The employment, training, supervision, and compensation of inspectors.

(2) The use of existing, and the acquisition of additional, equipment, supplies, and office space.

(b) This section is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 4. Section 41865.3 is added to the Food and Agricultural Code, to read:

41865.3. The committee shall not recommend and the secretary shall not utilize, a private entity a majority of whose officers and employees are persons regulated by this chapter.

SEC. 5. Section 41865.4 is added to the Food and Agricultural Code, to read:

41865.4. The government agency or private entity shall keep an accurate record of expenses incurred in performing its responsibilities. Those records shall be available for not less than three years for audit during regular business hours upon request of the secretary.

SEC. 6. Section 41865.5 is added to the Food and Agricultural Code, to read:

41865.5. The secretary may require the government agency or private entity to correct or cease any activity or function that is determined by the secretary not to be in the public interest or is in violation of this chapter, and shall notify the government agency or private entity in writing of these specific acts.

SEC. 7. Section 41865.6 is added to the Food and Agricultural Code, to read:

41865.6. The secretary shall reimburse the government agency or private entity, upon receipt of an invoice approved by the secretary, for the actual and necessary expenses incurred by the agency or entity in performing the services contracted for pursuant to this chapter.

SEC. 8. Section 41865.6 is added to the Food and Agricultural Code, to read:

41865.6. All expenses incurred in carrying out Section 41865.1 shall be paid from fees collected under this chapter.

CHAPTER 521

An act to amend Sections 13401, 13440, 13451, and 13480 of the Business and Professions Code, relating to petroleum products.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 13401 of the Business and Professions Code is amended to read:

13401. (a) "Sell" or any of its variants means attempt to sell, offer for sale or assist in the sale of, permit to be sold or offered for sale or delivery, offer for delivery, trade, barter, or expose for sale.

(b) "Manufacturer" means manufacturer, refiner, producer, or importer.

(c) "Petroleum products" means gasoline, diesel fuel, liquefied petroleum gas only when used as a motor fuel, kerosene, thinner,

solvent, liquefied natural gas, pressure appliance fuel, or white gasoline, or any motor fuel, or any oil represented as engine lubricant, engine oil, lubricating or motor oil, or any oil used to lubricate transmissions, gears, or axles.

(d) "Barrel," when applied to petroleum products, consists of 42 gallons.

(e) "Oil" means motor oil, engine lubricant, engine oil, lubricating oil, or oils used to lubricate transmissions, gears, or axles.

(f) "Motor oil" means engine oil, engine lubricant, or lubricating oil.

(g) "Gasoline" means a volatile mixture of liquid hydrocarbons, generally containing small amounts of additives, suitable for use as a fuel in spark-ignition internal combustion engines.

(h) "Engine fuel" means any liquid or gaseous matter used for the generation of power in an internal combustion engine. "Motor fuel" means "engine fuel" when that term is used in this chapter.

(i) "Motor vehicle fuel" means any product intended for consumption in an internal combustion engine to produce the power to self-propel a vehicle designed for transporting persons or property on a public street or highway.

(j) "Diesel fuel" means any petroleum product offered for sale which meets the standards prescribed for diesel fuel by this chapter.

(k) "Kerosene" means any petroleum product offered for sale which meets the standards prescribed for kerosene by this chapter.

(*l*) "Fuel oil" means any petroleum product offered for sale which meets the standards prescribed for fuel oil by this chapter.

(m) "Automotive spark-ignition engine fuel" means any product used for the generation of power in a spark-ignition internal combustion engine.

(n) "Compression-ignition engine fuel" means any product used for the generation of power in a compression-ignition internal combustion engine.

(o) "Gasoline-oxygenate blend" means a fuel consisting primarily of gasoline along with a substantial amount of one or more oxygenates. For purposes of this section, "substantial amount" means more than 0.35 mass percent oxygen or, if methanol is the only oxygenate, more than 0.15 mass percent oxygen.

(p) "Oxygenate" means an oxygen-containing, ashless, organic compound such as an alcohol or ether, which can be used as a fuel or fuel supplement.

SEC. 2. Section 13440 of the Business and Professions Code is amended to read:

13440. (a) The department shall establish specifications for automotive spark-ignition engine fuels. The department shall adopt by reference the latest standards established by a recognized consensus organization or standards writing organization such as the American Society for Testing and Materials (ASTM) or the Society of Automotive Engineers (SAE), for automotive spark-ignition engine fuel, except that no specification shall be less stringent than

required by any California state law.

(b) Any gasoline-oxygenate blend containing methanol shall also contain an alcohol cosolvent (butanol or higher molecular weight alcohol) in an amount equal to or greater than the volume percentage of methanol except those blends previously granted a waiver by the Environmental Protection Agency.

(c) Any gasoline-oxygenate blend containing ethanol that complies with Section 2258 of Title 13 of the California Code of Regulations, as it reads on the effective date of the act amending this section during the 1993–94 Regular Session, or as amended, may exceed the Reid vapor pressure limits of ASTM D 4814 for the area and season in which the blend is sold at retail by not more than 6.9 kilopascals (1.0 pounds per square inch), except the total Reid vapor pressure shall not exceed 103 kilopascals (15 pounds per square inch).

(d) The antiknock index as defined in Section 13403 for gasoline and gasoline-oxygenate blends shall not be less than 87.

(e) Gasoline and gasoline-oxygenate blends shall meet the latest specifications set forth in ASTM D 4814, except that no specification shall be less stringent than required by any California state law.

SEC. 3. Section 13451 of the Business and Professions Code is amended to read:

13451. It is unlawful for any person to sell or deliver to any premises for the purpose of sale, any product as or purported to be "compression-ignition engine fuel," "diesel fuel," "kerosene," or "fuel oil," unless the product conforms to the specifications of this article.

SEC. 4. Section 13480 of the Business and Professions Code is amended to read:

13480. (a) It is unlawful for any person to sell any petroleum product referred to in this chapter at any place where petroleum products are kept or stored for sale, unless there is affixed to each container, receptacle, pump, dispenser, and inlet end of the fill pipe of each underground storage tank, from which or into which that product is drawn or poured out for sale or delivery, a sign or label plainly visible consisting of the name of the product, the brand, trademark, or trade name of the product, and, in the case of engine fuel and kerosene, the grade or brand name designation.

(b) When the product is oil, as defined by Section 13401, each sign or label shall also have in letters or numerals, plainly visible, the viscosity grade classification as determined in accordance with the Society of Automotive Engineers (SAE) latest standard for engine oil viscosity classification SAE J300 or manual transmission and axle lubricants viscosity classification SAE J306, as applicable, and shall be preceded by the letters "SAE".

(c) When the product is automotive spark-ignition engine fuel, except M-85 and M-100 methanol fuel, there shall be conspicuously displayed on the dispensing device at least one sign or label showing the minimum octane number or antiknock index, as defined in

Section 13403, of the product sold therefrom.

(d) When the product is a motor fuel which contains at least 1 percent by volume ethanol (ethyl alcohol) or methanol (methyl alcohol), or a combination thereof, there shall be conspicuously displayed on the dispensing device at least one sign or label correctly stating the applicable one of the following statements:

(1) "Contains alcohol (ethanol)."

(2) "Contains alcohol (methanol)."

(3) "Contains alcohol (ethanol and methanol)."

Devices dispensing M-85 or M-100 methanol fuel shall be exempt from the requirements of this subdivision if the dispenser is labeled pursuant to subdivisions (a) and (f) using the word "methanol" as the product name and M-85 or M-100, as applicable, as grade designations.

(e) When the product is a motor fuel consisting of a mixture or premixture of gasoline and oil or gasoline-oxygenate blend and motor oil, there shall be conspicuously displayed on the dispensing device at least one sign or label stating the ratio of gasoline to motor oil or gasoline-oxygenate blend to motor oil.

(f) All signs or labels required by this section for retail motor fuel dispensers and containers of more than one gallon capacity shall be in letters and numerals not less than one-half inch (12.70 mm) in height. On containers of one gallon or less, the signs or labels shall be in letters and numerals not less than one-fourth inch (6.35 mm) in height and one-sixteenth inch (1.59 mm) in width.

(g) The provisions of this section pertaining to octane numbers or antiknock index and motor oil SAE viscosity number grade shall not apply to products sold for aviation purposes.

(h) This section shall apply, with respect to thinners or solvents, only to the sale, delivery, or offer for sale of the products through service stations, garages, and other retail outlets.

CHAPTER 522

An act to add Section 1192.95 to the Insurance Code, relating to insurance.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 1192.95 is added to the Insurance Code, to read:

1192.95. (a) Notwithstanding Section 1100, an insurer may make excess funds investments in investment pools and cash management pools established pursuant to this section. The pools shall meet all of the following standards:

(1) All participants in a pool shall each be affiliated with one another within the meaning of subdivision (a) of Section 1215 and shall all be insurers, or a pension plan or profit-sharing plan of a participant or affiliate.

(2) The pools shall be a corporation, partnership, trust, or business trust domiciled in the United States with all assets held in accordance with Section 1104.9 and shall be maintained in one or more accounts in the name of or on behalf of the investment pool. Pool assets shall be held under a bank custody agreement that states and recognizes the claims and rights of each participant, acknowledges that the pool assets are held solely for the benefit of each participant in proportion to the aggregate amount of its pool investments, and states that the investments shall not be commingled with the general assets of the custodian or any other person. The pool manager shall be an insurer as defined by Section 826 or a business entity registered as an investment adviser under the federal Investment Act of 1940.

(3) Any management fee shall be subject to disapproval by the commissioner. Costs directly incurred in acquiring or selling assets, such as commissions, transaction fees, or custodial fees, are not management fees and may be charged by the pool to the participants as long as these fees are on a direct cost reimbursement basis. All costs shall be apportioned to each participant in proportion to its interest in the pool.

(4) All shares of the pool shall be of the same class with equal rights, preferences, and privileges. Each share shall participate equally in dividends and distributions declared by the pool on liquidation in proportion to each participant's interest. When issued, the shares shall be fully paid and nonassessable and shall have no preemptive, conversion, or exchange rights.

(5) Each participant shall be entitled to require the pool to redeem all or any portion of the shares held by the participant on demand without penalty or assessment on any business day.

(6) All assets of a cash management pool shall be assets that participant insurers may lawfully acquire individually and shall be: (A) debt obligations issued by or on behalf of the United States, its territories and possessions, the District of Columbia, and states or their political subdivisions, agencies, and instrumentalities, including industrial development obligations, having a maturity not exceeding one year; (B) corporate debt obligations, other than debt obligations issued, assumed, guaranteed, or insured by a participant or by any affiliate of a participant, having a maturity not exceeding one year and that are rated One or Two by the Securities Valuation Office of the National Association of Insurance Commissioners; or (C) accounts, deposits, or obligations of banks or savings and loan associations insured by an agency or instrumentality of the federal government.

(7) All assets of an investment pool shall be: (A) investments that are authorized under Section 1191, other than stock issued, assumed, guaranteed, or insured by a participant or any affiliate of a

participant; (B) accounts, deposits, or obligations of banks or savings and loan associations insured by an agency or instrumentality of the federal government; or (C) investments that are authorized under Section 1192, other than securities or notes issued, assumed, guaranteed, or insured by a participant or any affiliate of a participant, or under Section 1194.5 or 1241.

(8) The assets of pools shall be required to meet the requirements of and be authorized for investment by a domestic incorporated insurer under Article 3 (commencing with Section 1170) or this article.

(9) No pool shall make investments in purchases of, or loans upon, more than 30 percent of the total in par value or more than 30 percent of the total number of outstanding shares of the capital stock of any one corporation.

(10) Transactions between the pool and its participants shall not be deemed to be material for purposes of subdivision (c) of Section 1215.4. Investment activity of pools and transactions between pools and participants shall be reported annually in the registration statement required by Section 1215.4.

(11) Participation in an investment pool shall be subject to a written pooling agreement that shall be approved by the participant's board of directors and shall provide that (A) the underlying assets of the pool shall not be commingled with the general assets of the pool manager or any other person; (B) each participant must own an undivided interest in the underlying assets of the pool; (C) the underlying assets of the investment pool are held solely for the benefit of each participant; and (D) the pool manager shall make the records of the investment pool available for inspection by the commissioner. Pool agreements shall also specify what type of share participants hold to evidence their beneficial interest in the pool's assets. Prior to the execution of a pool agreement, a participating insurer's board of directors must approve the agreement only after having received a written opinion from an independent outside counsel explaining the ramifications and possible effects that a declaration of insolvency by a participant will have on the insurer's share of the investment pool.

(12) No participant insurer may invest more than 10 percent of admitted assets in a single pool or more than 25 percent of admitted assets in all pools combined.

(13) Each participant's proportionate share of the assets of a pool shall be deemed to be the direct holdings of that participant for purposes of determining compliance with the investment requirements of this code and shall be reported as such on required quarterly and annual reports.

(14) The pool manager shall compile and maintain detailed accounting records setting forth (A) the cash received and disbursements reflecting each participant's proportional investment in the investment pool; (B) a complete description of all underlying assets of the investment pool including amount, interest rate, and

maturity date, if any, and other appropriate designations; and (C) other records that, on a daily basis, will allow the commissioner and the participants to verify each participant's investments in the pool.

(15) Pools shall not borrow or loan assets, except for securities-lending arrangements that are otherwise lawful for insurer participants of the pool.

(b) As used in this section, "share" means stock, participation unit, certificate of interest, or other evidence of beneficial ownership in the pool, whether evidenced by an instrument or by a book entry maintained by the pool.

(c) The commissioner shall have the authority to review any pool agreement and to disapprove any agreement that does not comply with this section. The commissioner shall have the authority to review the operation of any pool and to order compliance with this section. The commissioner shall have the authority to disallow, as an admitted asset, any pool investment not in compliance with this section. The commissioner may impose a fee upon any pool to recoup the actual cost of review under this section.

CHAPTER 523

An act to amend Section 8574.10 of, and to add Section 51015.05 to, the Government Code, and to amend Section 3106 of the Public Resources Code, relating to oil and gas.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 8574.10 of the Government Code is amended to read:

8574.10. (a) The Review Subcommittee of the State Interagency Oil Spill Committee is hereby established. As used in this chapter, "review subcommittee" means the Review Subcommittee of the State Interagency Oil Spill Committee. The Director of Fish and Game, who shall serve as chair of the review subcommittee, the executive officer of the State Lands Commission, the executive director of the California Coastal Commission, the State Fire Marshal, the State Oil and Gas Supervisor, and the executive director of the State Water Resources Control Board, or their designees, shall constitute the members of the review subcommittee. The administrator may serve as the designee of the Director of Fish and Game.

(b) All regulations and guidelines adopted pursuant to Chapter 7.4 (commencing with Section 8670.1) and Division 7.8 (commencing with Section 8750) of the Public Resources Code, and amendments to the state oil spill contingency plan, shall, prior to

adoption, be submitted to the review subcommittee for review and comment.

(c) Within 60 days from the date of receipt of regulations, guidelines, or amendments pursuant to subdivision (a), the review subcommittee shall review and submit comments to the submitting agency. Any recommendation of the review subcommittee shall be based on the standards of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, consisting of the provisions specified in Section 8670.1. This comment period may overlap any other comment periods required by law or allowed by the administrator.

(d) The comments and recommendations of the review subcommittee shall not be binding on the submitting agency. Prior to adoption and within 30 days from the date of receipt of a response from the review subcommittee, the submitting agency shall respond in writing to the review subcommittee concerning all of the findings and recommendations of the review subcommittee. The submitting agency may reject the recommendations of the review subcommittee only if the submitting agency determines that the action it chooses more effectively furthers the purposes of, and more effectively complies with, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act. Whenever the submitting agency departs from a finding or recommendation of the review subcommittee, the written response of the submitting agency shall state its rationale for concluding that its action more effectively furthers the purposes of, and more effectively complies with, that act. Any public hearing that is required by this chapter or any other statute shall be held after the submitting agency has filed a response to the review subcommittee.

SEC. 2. Section 51015.05 is added to the Government Code, immediately preceding Section 51015.1, to read:

51015.05. (a) The State Fire Marshal shall establish and maintain a centralized data base containing information and data regarding the following intrastate pipelines:

(1) Pipelines, as defined in paragraph (3) of subdivision (a) of Section 51010.5, used for the transportation of crude oil that operates by gravity or at a stress level of 20 percent or less of the specified minimum yield strength of the pipe.

(2) Pipelines, as defined in paragraph (4) of subdivision (a) of Section 51010.5, used for the transportation of petroleum in onshore gathering lines located in rural areas.

(b) The data base shall include, but is not limited to, an inventory of the pipelines described in subdivision (a), including pipeline locations, ownership, ages, and inspection histories, that are in the possession of the owner or operator of the oil field or other gas facility.

(c) The State Fire Marshal shall regularly update the data base and shall make the information in the data base available to the public, and to all local, state, and federal agencies.

(d) Any state or local governmental agency which regulates,

supervises, or exerts authority over any pipeline described in subdivision (a) shall report any information or data specified in subdivision (b) in its possession to the State Fire Marshal. That information shall be submitted to the State Fire Marshal in a computer compatible format.

(e) The State Fire Marshal shall conduct a study of the fitness and safety of all pipelines described in subdivision (a), and investigate incentive options that would encourage pipeline replacement or improvements, including, but not limited to, a review of existing regulatory, permit, and environmental impact report requirements and other existing public policies, as may be identified by the Pipeline Safety Advisory Committee and adopted by the State Fire Marshal, that could act as barriers to the replacement or improvement of those pipelines. On or before December 31, 1995, the State Fire Marshal shall report his or her findings and recommendations to the Legislature.

(f) The costs of this section shall be funded from federal block grant funds. This section shall become operative only upon receipt of these federal block grant funds as determined by the State Fire Marshal. Upon receipt of these funds the State Fire Marshal shall provide written notice to both houses of the Legislature for publication in their respective journals.

SEC. 3. Section 3106 of the Public Resources Code is amended to read:

3106. (a) The supervisor shall so supervise the drilling, operation, maintenance, and abandonment of wells and the operation, maintenance, and removal or abandonment of tanks and facilities attendant to oil and gas production, including pipelines not subject to regulation pursuant to Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code that are within an oil and gas field, so as to prevent, as far as possible, damage to life, health, property, and natural resources; damage to underground oil and gas deposits from infiltrating water and other causes; loss of oil, gas, or reservoir energy, and damage to underground and surface waters suitable for irrigation or domestic purposes by the infiltration of, or the addition of, detrimental substances.

(b) The supervisor shall also supervise the drilling, operation, maintenance, and abandonment of wells so as to permit the owners or operators of the wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons and which, in the opinion of the supervisor, are suitable for this purpose in each proposed case. To further the elimination of waste by increasing the recovery of underground hydrocarbons, it is hereby declared as a policy of this state that the grant in an oil and gas lease or contract to a lessee or operator of the right or power, in substance, to explore for and remove all hydrocarbons from any lands in the state, in the absence of an express provision to the contrary contained in the lease or

contract, is deemed to allow the lessee or contractor, or the lessee's or contractor's successors or assigns, to do what a prudent operator using reasonable diligence would do, having in mind the best interests of the lessor, lessee, and the state in producing and removing hydrocarbons, including, but not limited to, the injection of air, gas, water, or other fluids into the productive strata, the application of pressure heat or other means for the reduction of viscosity of the hydrocarbons, the supplying of additional motive force, or the creating of enlarged or new channels for the underground movement of hydrocarbons into production wells, when these methods or processes employed have been approved by the supervisor, except that nothing contained in this section imposes a legal duty upon the lessee or contractor, or the lessee's or contractor's successors or assigns, to conduct these operations.

(c) The supervisor may require an operator to implement a monitoring program, designed to detect releases to the soil and water, including both groundwater and surface water, for aboveground oil production tanks and facilities.

(d) To best meet oil and gas needs in this state, the supervisor shall administer this division so as to encourage the wise development of oil and gas resources.

CHAPTER 524

An act to amend Section 97.035 of the Revenue and Taxation Code, relating to local government finance.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 97.035 of the Revenue and Taxation Code, as amended by Chapter 155 of the Statutes of 1994, is amended to read:

97.035. Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 97, as modified by Section 97.03 for the 1992–93 fiscal year, shall be modified for the 1993–94 fiscal year pursuant to subdivisions (a) to (c), inclusive, as follows:

(a) The amount of property tax revenue deemed allocated in the prior fiscal year to each county and city and county shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions for counties and cities and counties determined pursuant to this section shall be one billion nine hundred ninety-eight million dollars ($1,998,000,000) in the 1993–94 fiscal year.

(2) The Director of Finance shall determine the amount of the reduction for each county or city and county as follows:

(A) The proportionate share of the property tax revenue reduction for each county or city and county that would have been imposed on all counties under the proposal specified in the "May Revision of the 1993–94 Governor's Budget" shall be determined by reference to the document entitled "Estimated County Property Tax Transfers Under Governor's May Revision Proposal," published by the Legislative Analyst's office on June 1, 1993.

(B) Each county's or city and county's proportionate share of total taxable sales in all counties in the 1991–92 fiscal year shall be determined.

(C) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (A) to the one billion nine hundred ninety-eight million dollar ($1,998,000,000) statewide reduction for counties and cities and counties.

(D) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (B) to the one billion nine hundred ninety-eight million dollar ($1,998,000,000) statewide reduction for counties and cities and counties.

(E) The Director of Finance shall add the amounts determined pursuant to subparagraphs (C) and (D) for each county and city and county, and divide the resulting figure by two. The amount so determined for each county and city and county shall be divided by a factor of 1.038. The resulting figure shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior fiscal year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee its determination of the amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify the auditor of each county and city and county of the amount of property tax revenue reduction determined for each county and city and county.

(5) Notwithstanding any other provision of this subdivision, the amount of the reduction specified in paragraph (2) for any county or city and county that has first implemented, for the 1993–94 fiscal year, the alternative procedure for the distribution of property tax levies authorized by Chapter 2 (commencing with Section 4701) of Part 8 shall be reduced, for the 1993–94 fiscal year only, in the amount of any increased revenue allocated to each qualifying school entity that would not have been allocated for the 1993–94 fiscal year but for the implementation of that alternative procedure. For purposes of this paragraph, "qualifying school entity" means any school district, county office of education, or community college district that is not an excess tax school entity as defined in Section 95.1. Notwithstanding any other provision of this paragraph, the amount

of any reduction calculated pursuant to this paragraph for any county or city and county shall not exceed the reduction calculated for that county or city and county pursuant to paragraph (2).

(b) The amount of property tax revenue deemed allocated in the prior fiscal year to each city shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions determined for cities pursuant to this section shall be two hundred eighty-eight million dollars ($288,000,000) in the 1993–94 fiscal year.

(2) The Director of Finance shall determine the amount of reduction for each city as follows:

(A) The amount of property tax revenue that is estimated to be attributable in the 1993–94 fiscal year to the amount of each city's state assistance payment received by that city pursuant to Chapter 282 of the Statutes of 1979 shall be determined.

(B) A factor for each city equal to the amount determined pursuant to subparagraph (A) for that city, divided by the total of the amounts determined pursuant to subparagraph (A) for all cities, shall be determined.

(C) An amount for each city equal to the factor determined pursuant to subparagraph (B), multiplied by three hundred eighty-two million five hundred thousand dollars ($382,500,000), shall be determined.

(D) In no event shall the amount for any city determined pursuant to subparagraph (C) exceed a per capita amount of nineteen dollars and thirty-one cents ($19.31), as determined in accordance with that city's population on January 1, 1993, as estimated by the Department of Finance.

(E) The amount determined for each city pursuant to subparagraphs (C) and (D) shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee those amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify each county auditor of the amount of property tax revenue reduction determined for each city located within that county.

(c) (1) The amount of property tax revenue deemed allocated in the prior fiscal year to each special district, as defined pursuant to subdivision (m) of Section 95, shall be reduced by the amount determined for the district pursuant to paragraph (3) and increased by the amount determined for the district pursuant to paragraph (4). The total net amount of these changes is intended to equal two hundred forty-four million dollars ($244,000,000) in the 1993–94 fiscal year.

(2) (A) Notwithstanding any other provision of this subdivision, no reduction shall be made pursuant to this subdivision with respect

to any of the following special districts:

(i) A local hospital district as described in Division 23 (commencing with Section 32000) of the Health and Safety Code.

(ii) A water agency that does not sell water at retail, but not including an agency the primary function of which, as determined on the basis of total revenues, is flood control.

(iii) A transit district.

(iv) A police protection district formed pursuant to Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code.

(v) A special district that was a multicounty special district as of July 1, 1979.

(B) Notwithstanding any other provision of this subdivision, the first one hundred four thousand dollars ($104,000) of the amount of any reduction that otherwise would be made under this subdivision with respect to a qualifying community services district shall be excluded. For purposes of this subparagraph, a "qualifying community services district" means a community service district that meets all of the following requirements:

(i) Was formed pursuant to Division 3 (commencing with Section 61000) of Title 6 of the Government Code.

(ii) Succeeded to the duties and properties of a police protection district upon the dissolution of that district.

(iii) Currently provides police protection services to substantially the same territory as did that district.

(iv) Is located within a county in which the board of supervisors has requested the Department of Finance that this subparagraph be operative in the county.

(3) On or before September 15, 1993, the county auditor shall determine an amount for each special district equal to the amount of its allocation determined pursuant to Sections 96 or 97, and 98 for the 1993–94 fiscal year multiplied by the ratio determined pursuant to paragraph (1) of subdivision (a) of Section 98.6 as that section read on June 15, 1993. In those counties that were subject to Sections 98.65, 98.66, 98.67, and 98.68, the county auditor shall determine an amount for each special district that represents the current amount of its allocation determined pursuant to Sections 96 or 97, and 98 for the 1993–94 fiscal year that is attributed to the property tax shift from schools required by Chapter 282 of the Statutes of 1979. In determining this amount, the county auditor shall adjust for the influence of increased assessed valuation within each district, including the effect of jurisdictional changes, and the reductions in property tax allocations required in the 1992–93 fiscal year by Chapters 699 and 1369 of the Statutes of 1992. In the case of a special district that has been consolidated or reorganized, the auditor shall determine the amount of its current property tax allocation that is attributable to the prior district's or districts' receipt of state assistance payments pursuant to Chapter 282 of the Statutes of 1979. Notwithstanding any other provision of this paragraph, for a special

district that is governed by a city council or whose governing board has the same membership as a city council and that is a subsidiary district as defined in subdivision (e) of Section 16271 of the Government Code, the county auditor shall multiply the amount that otherwise would be calculated pursuant to this paragraph by 0.38 and the result shall be used in the calculations required by paragraph (5). In no event shall the amount determined by this paragraph be less than zero.

(4) (A) On or before September 15, 1993, the county auditor shall determine an amount for each special district that is engaged in fire protection activities, as reported to the Controller for inclusion in the 1989–90 Edition of the Financial Transactions Report Concerning Special Districts under the heading of "Fire Protection," that is equal to the amount of revenue allocated to that special district from the Special District Augmentation Fund for fire protection activities in the 1992–93 fiscal year. In the case of a special district, other than a special district governed by the county board of supervisors or whose governing body is the same as the county board of supervisors, that is engaged in fire protection activities as reported to the Controller, the county auditor shall also determine the amount by which the district's amount determined pursuant to paragraph (3) exceeds the amount by which its allocation was reduced by operation of Section 98.6 in the 1992–93 fiscal year. This amount shall be added to the amount otherwise determined for the district under this paragraph. In any county subject to Section 98.65, 98.66, 98.67, or 98.68, the county auditor shall determine for each special district that is engaged in fire protection activities an amount that is equal to the amount determined for that district pursuant to paragraph (3).

(B) For purposes of this paragraph, a special district includes any special district that is allocated property tax revenue pursuant to this chapter and does not appear in the State Controller's Report on Financial Transactions Concerning Special Districts, but is engaged in fire protection activities and appears in the State Controller's Report on Financial Transactions Concerning Counties.

(5) The total amount of property taxes allocated to special districts by the county auditor as a result of paragraph (4) shall be subtracted from the amount of property tax revenues not allocated to special districts by the county auditor as a result of paragraph (3) to determine the amount to be deposited in the Education Revenue Augmentation Fund as specified in subdivision (d).

(6) On or before September 30, 1993, the county auditor shall notify the Director of Finance of the net amount determined for special districts pursuant to paragraph (5).

(d) (1) The amount of property tax revenues not allocated to the county, city and county, cities within the county, and special districts as a result of the reductions required by subdivisions (a), (b), and (c) shall instead be deposited in the Educational Revenue Augmentation Fund established in each county or city and county pursuant to Section 97.03. The amount of revenue in the Educational Revenue

Augmentation Fund, derived from whatever source, shall be allocated pursuant to paragraphs (2) and (3) to school districts and county offices of education, in total, and to community college districts, in total, in the same proportion that property tax revenues were distributed to school districts and county offices of education, in total, and community college districts, in total, during the 1992–93 fiscal year.

(2) The county auditor shall, based on information provided by the county superintendent of schools pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to school districts and county offices of education only to those school districts and county offices of education within the county that are not excess tax school entities, as defined in Section 95.1. The county superintendent of schools shall determine the amount to be allocated to each school district in inverse proportion to the amounts of property tax revenue per average daily attendance in each school district. For each county office of education, the allocation shall be made based on the historical split of base property tax revenue between the county office of education and school districts within the county. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a school district or county office of education upon that district or county office of education becoming an excess tax school entity. If, after determining the amount to be allocated to each school district and county office of education, the county superintendent of schools determines there are still additional funds to be allocated, the county superintendent of schools shall determine the remainder to be allocated in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per average daily attendance in each remaining school district, and on the basis of the historical split described above for each county office of education, that is not an excess tax school entity until all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated. The county superintendent of schools may determine the amounts to be allocated between each school district and county office of education to ensure that all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated.

(3) The county auditor shall, based on information provided by the Chancellor of the California Community Colleges pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to community college districts only to those community college districts within the county that are not excess tax school entities, as defined in Section 95.1. The chancellor shall determine the amount to be allocated to each community college district in inverse proportion to the amounts of property tax revenue per funded full-time equivalent student in each community college district. In

no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a community college district upon that district becoming an excess tax school entity.

(4) If, after making the allocation required pursuant to paragraph (2), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (3). If, after making the allocation pursuant to paragraph (3), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (2). If, after determining the amount to be allocated to each community college district, the Chancellor of the California Community Colleges determines that there are still additional funds to be allocated, the Chancellor of the California Community Colleges shall determine the remainder to be allocated to each community college district in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per funded full-time equivalent student in each remaining community college district that is not an excess tax school entity until all funds that would not result in a community college district becoming an excess tax school entity are allocated.

(5) For purposes of allocations made pursuant to Section 97 for the 1994–95 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than those amounts deposited in the Educational Revenue Augmentation Fund pursuant to any provision of the Health and Safety Code, shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

CHAPTER 525

An act to amend Sections 30514, 30603, and 30716 of the Public Resources Code, relating to coastal resources.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 30514 of the Public Resources Code is amended to read:

30514. (a) A certified local coastal program and all local implementing ordinances, regulations, and other actions may be amended by the appropriate local government, but no such amendment shall take effect until it has been certified by the commission.

(b) Any proposed amendments to a certified local coastal program shall be submitted to, and processed by, the commission in accordance with the applicable procedures and time limits specified

in Sections 30512 and 30513, except that the commission shall make no determination as to whether a proposed amendment raises a substantial issue as to conformity with the policies of Chapter 3 (commencing with Section 30200) as would otherwise be required by Section 30512. In no event shall there be more than three of these submittals of proposed amendments in any calendar year. However, there are no limitations on the number of amendments included in each of the three submittals.

(c) The commission shall, by regulation, establish a procedure whereby proposed amendments to a certified local coastal program may be reviewed and designated by the executive director of the commission as being minor in nature or as requiring rapid and expeditious action. That procedure shall include provisions authorizing local governments to propose amendments to the executive director for that review and designation. Proposed amendments that are designated as being minor in nature or as requiring rapid and expenditious action shall not be subject to subdivision (b) or Sections 30512 and 30513 and shall take effect on the 10th working day after designation. Amendments that allow changes in uses shall not be so designated.

(d) (1) The executive director may determine that a proposed local coastal program amendment is de minimis if the executive director determines that a proposed amendment would have no impact, either individually or cumulatively, on coastal resources, is consistent with the policies of Chapter 3 (commencing with Section 30200), and meets the following criteria:

(A) The local government, at least 21 days prior to the date of submitting the proposed amendment to the executive director, has provided public notice, and provided a copy to the commission, which specifies the dates and places where comments will be accepted on the proposed amendment, contains a brief description of the proposed amendment, and states the address where copies of the proposed amendment are available for public review, by one of the following procedures:

(i) Publication, not fewer times than required by Section 6061 of the Government Code, in a newspaper of general circulation in the area affected by the proposed amendment. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(ii) Posting of the notice by the local government both onsite and offsite in the area affected by the proposed amendment.

(iii) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

(B) The proposed amendment does not propose any change in land use or water uses or any change in the allowable use of property.

(2) At the time that the local government submits the proposed amendment to the executive director, the local government shall also submit to the executive director any public comments that were

received during the comment period provided pursuant to subparagraph (A) of paragraph (1).

(3) (A) The executive director shall make a determination as to whether the proposed amendment is de minimis within 10 working days of the date of submittal by the local government. If the proposed amendment is determined to be de minimis, the proposed amendment shall be noticed in the agenda of the next regularly scheduled meeting of the commission, in accordance with Section 11125 of the Government Code, and any public comments forwarded by the local government shall be made available to the members of the commission.

(B) If three members of the commission object to the executive director's determination that the proposed amendment is de minimis, the proposed amendment shall be set for public hearing in accordance with the procedures specified in subdivision (b), or as specified in subdivision (c) if applicable, as determined by the executive director, or, at the request of the local government, returned to the local government. If set for public hearing under subdivision (b), the time requirements set by Sections 30512 and 30513 shall commence from the date on which the objection to the de minimis designation was made.

(C) If three of more members of the commission do not object to the de minimis determination, the de minimis local coastal program amendment shall become part of the certified local coastal program 10 days after the date of the commission meeting.

(4) The commission may, after a noticed public hearing, adopt guidelines to implement this subdivision, which shall be exempt from review by the Office of Administrative Law and from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The commission shall file any guidelines adopted pursuant to this paragraph with the Office of Administrative Law.

SEC. 2. Section 30603 of the Public Resources Code is amended to read:

30603. (a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:

(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.

(2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.

(3) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive

coastal resource area.

(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).

(5) Any development which constitutes a major public works project or a major energy facility.

(b) (1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

(2) The grounds for an appeal of a denial of a permit pursuant to paragraph (5) of subdivision (a) shall be limited to an allegation that the development conforms to the standards set forth in the certified local coastal program and the public access policies set forth in this division.

(c) Any action described in subdivision (a) shall become final after the 10th working day from the date of receipt by the commission of the notice of the local government's final action, unless an appeal is filed within that time.

(d) A local government taking an action on a coastal development permit shall send notification of its final action to the commission by certified mail within seven calendar days from the date of taking the action.

SEC. 3. Section 30716 of the Public Resources Code is amended to read:

30716. (a) A certified port master plan may be amended by the port governing body, but no such amendment shall take effect until it has been certified by the commission. Any proposed amendment shall be submitted to, and processed by, the commission in the same manner as provided for submission and certification of a port master plan.

(b) The commission shall, by regulation, establish a procedure whereby proposed amendments to a certified port master plan may be reviewed and designated by the executive director of the commission as being minor in nature and need not comply with Section 30714. Such amendments shall take effect on the 10th working day after the executive director designates such amendments as minor.

(c) (1) The executive director may determine that a proposed certified port master plan amendment is de minimis if the executive director determines that the proposed amendment would have no impact, either individually or cumulatively, on coastal resources, is consistent with the policies of Chapter 3 (commencing with Section 30200), and meets the following criteria:

(A) The port governing body, at least 21 days prior to the date of submitting the proposed amendment to the executive director, has provided public notice, and provided a copy to the commission, which specifies the dates and places where comments will be

accepted on the proposed amendment, contains a brief description of the proposed amendment, and states the address where copies of the proposed amendment are available for public review, by one of the following procedures:

(i) Publication, not fewer times than required by Section 6061 of the Government Code, in a newspaper of general circulation in the area affected by the proposed amendment. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(ii) Posting of the notice by the port governing body both onsite and offsite in the area affected by the proposed amendment.

(iii) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

(B) The proposed amendment does not propose any change in land use or water uses or any change in the allowable use of property.

(2) At the time that the port governing body submits the proposed amendment to the executive director, the port governing body shall also submit to the executive director any public comments that were received during the comment period provided pursuant to subparagraph (A) of paragraph (1).

(3) (A) The executive director shall make a determination as to whether the proposed amendment is de minimis within 10 working days from the date of submittal by the local government. If the proposed amendment is determined to be de minimis, the proposed amendment shall be noticed in the agenda of the next regularly scheduled meeting of the commission, in accordance with Section 11125 of the Government Code, and any public comments forwarded by the port governing body shall be made available to the members of the commission.

(B) If three members of the commission object to the executive director's determination that the proposed amendment is de minimis, the proposed amendment shall be set for public hearing in accordance with the procedures specified in subdivision (b), or as specified in subdivision (c) if applicable, as determined by the executive director, or, at the request of the port governing body, returned to the local government. If set for public hearing under subdivision (b), the time requirements set by this section and Section 30714 shall commence from the date on which the objection to the de minimis designation was made.

(C) If three of more members of the commission do not object to the de minimis determination, the de minimis amendment shall become a part of the certified port master plan 10 days from the date of the commission meeting.

(4) The commission may, after a noticed public hearing, adopt guidelines to implement this subdivision, which shall be exempt from review by the Office of Administrative Law and from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The commission shall file any guidelines

adopted pursuant to this paragraph with the Office of Administrative Law.

SEC. 4. The amendment to subdivision (c) of Section 30603 of the Public Resource Code made by Section 2 of this act does not constitute a change in, but is declaratory of, existing law.

CHAPTER 526

An act to add Section 6009 to the Business and Professions Code, relating to attorneys.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 6009 is added to the Business and Professions Code, to read:

6009. (a) Notwithstanding any other provision of law, a city, county, or city and county may require attorneys who qualify as lobbyists, as defined by the local jurisdiction, to register and disclose their lobbying activities directed toward the local agencies of those jurisdictions, in the same manner and to the same extent such registration and disclosure is required of nonattorney lobbyists. Any prohibitions against specified activities by lobbyists enacted by a city, county, or city and county shall also apply to attorneys who qualify as lobbyists.

(b) For purposes of this section, information about a lobbyist that may be required to be disclosed is:

(1) The name, business address, and telephone number of the lobbyist, of any lobbying firm of which the lobbyist is a partner, owner, officer, or employee; and of any persons or lobbying firms paid to lobby by the lobbyist.

(2) The name, business address, and business telephone number of each client who pays the lobbyist to lobby; the specific matter and agency lobbied, itemized by client; and the amount of money paid to the lobbyist for lobbying and the total expenses of the lobbyist for lobbying, itemized by client.

(3) All gifts or payments made by the lobbyist to officials in the jurisdiction, itemized by the name of the official, the amount, date, and description of the gift or payment, and the names of the person making the gift or payment and the person receiving the gift or payment.

(4) All campaign contributions made, arranged, or delivered by the lobbyist to officials in the jurisdiction, specified by amount, date, and name of the official receiving the contribution.

CHAPTER 527

An act to add Section 241 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 241 is added to the Revenue and Taxation Code, to read:

241. (a) The first twenty thousand dollars ($20,000) of personal property that consists of hand tools owned and supplied by an employee that are required as a condition of that employee's employment are exempt from taxation.

(b) For purposes of this section:

(1) "Hand tools" means hand-held implements and equipment, including hand-held power tools, of which any one may be transported to and from the workplace and which are necessary for the ordinary and regular performance of the employee's work, and also means the appropriate storage containers used to store those implements and that equipment.

(2) "Hand tools owned and supplied by an employee" means only those hand tools that are either owned by the employee prior to the employment or acquired and paid for by the employee during the employment, that the employee will continue to own after termination of the employment.

(3) "Employee" means any individual who is employed by an employer that directly or indirectly supervises that person and exercises control over the wages and working conditions of individual workers. "Employee" does not include a self-employed individual or an independent contractor.

SEC. 2. Notwithstanding Section 2229 of the Revenue and Taxation Code, the requirements of that section, relating to any exemption of property for more than five years or for more than 75 percent of the value thereof, shall not apply to any exemption made by this act. In addition, no appropriation is made by this act and the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to this act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 528

An act to amend Section 66679 of the Government Code, relating to White Slough.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 66679 of the Government Code is amended to read:

66679. (a) The city, in consultation with the county, the commission, the department, and other affected local, state, and federal agencies, has previously prepared a draft White Slough Specific Area Plan proposal as a first step toward the orderly, long-range conservation, use, and management of the natural, scenic, recreational, and manmade resources of White Slough.

(b) On or before January 1, 1996, the city and the county shall jointly adopt a final plan which shall include a specific wetlands enhancement segment for the area of White Slough. Provided that no other feasible measures are devised during the environmental review process which have fewer environmental impacts and which accomplish the goals of this chapter, this plan shall include the permanent protection and enhancement of at least 336 acres of tidal wetlands within White Slough and 132 acres of tidally influenced areas in South White Slough, provide for the minimum amount of fill, not to exceed 13 acres, necessary to widen State Highway Route 37 to a four-lane highway and to construct interchanges between State Highway Route 37 and State Highway Route 29 and Sacramento Street, provide flood protection for upland areas, provide for suitable water quality, and provide for wetlands enhancement for all tidally influenced areas of South White Slough, including a program for the acquisition, enhancement, and permanent preservation of those areas.

(c) Not later than 30 days after adoption of the final plan by the city and the county, the city and the county shall submit the plan to the commission for review. The commission shall approve or disapprove the plan within 45 days of submittal on the basis of whether the plan meets the objectives of Sections 66677 and 66680 and includes changes to the relevant city and relevant county general and specific plans and includes proposed city ordinances and county ordinances necessary to implement the plan.

(d) Upon approval of the plan by the commission and the adoption by the city and the county of necessary changes to the general and specific plans and implementing ordinances, the plan shall be the primary basis for reviewing applications for state and local permits for projects affecting White Slough. A permit shall be issued only if the permitting entity finds that the proposed project

is consistent with the plan and the requirements of this chapter.

(e) After adoption, no changes shall be made in the plan or the implementing ordinances without the prior notification and approval of the commission.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 529

An act to add Section 11414 to the Penal Code, relating to crimes.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 11414 is added to the Penal Code, to read:

11414. (a) Any person who intentionally harasses the child or ward of any other person because of that person's employment, is guilty of a misdemeanor.

(b) For purposes of this section, the following definitions shall apply:

(1) "Child" and "ward" mean a person under the age of 16 years.

(2) "Harasses" means knowing and willful conduct directed at a specific child that seriously alarms, annoys, torments, or terrorizes the child, and that serves no legitimate purpose. The conduct must be such as would cause a reasonable child to suffer substantial emotional distress, and actually cause the victim to suffer substantial emotional distress.

(c) A second conviction under this section shall be punished by imprisonment in a county jail for not less than five days. A third or subsequent conviction under this section shall be punished by imprisonment in a county jail for not less than 30 days.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the

California Constitution.

CHAPTER 530

An act to amend Section 1857.7 of the Insurance Code, relating to insurance.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 1857.7 of the Insurance Code is amended to read:

1857.7. The application referred to in subdivision (b) of Section 1861.05 shall include, but shall not be limited to, all of the following information:

(1) Premiums written.

(2) Premiums earned.

(3) Unearned premiums.

(4) The dollar amount of claims paid.

(5) The number of outstanding claims.

(6) Net loss reserves for outstanding claims excluding claims incurred but not reported.

(7) Net loss reserves for claims incurred but not reported.

(8) Losses incurred as a percentage of premiums earned.

(9) Net investment gain or loss and other income or gain or loss allocated to products liability lines.

(10) Net income before federal and foreign income taxes.

(11) Expenses incurred including loss adjustment expense, commission and brokerage expense, other acquisition expense and general expense.

CHAPTER 531

An act to amend Section 14526.6 of the Public Resources Code, relating to beverage containers, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 14526.6 of the Public Resources Code is amended to read:

14526.6. "Supermarket site" means any certified recycling center

which redeems all types of empty beverage containers in accordance with Section 14572, and which is located within, or outside and immediately adjacent to the entrance of, or at, or within the contiguous parking lot surrounding, a supermarket which is the focal point of a convenience zone, and which is accessible to motor traffic from the supermarket parking area to the recycling center without leaving the parking lot.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to increase the redemption of beverage containers and ensure the continuation of recycling operations, thereby protecting public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 532

An act to amend Section 56 of Chapter 1267 of the Statutes of 1993, and to amend Sections 13.50 and 13.70 of Chapter 55 of the Statutes of 1993, relating to the Medical Board of California.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 56 of Chapter 1267 of the Statutes of 1993 is amended to read:

Sec. 56. In the event that the California Medical Association prevails in its complaint for injunction and other relief with respect to the transfer of principal and interest from the Contingent Fund of the Medical Board of California to the General Fund, all moneys returned to the Contingent Fund of the Medical Board of California, except any amount paid to the California Medical Association for attorneys' fees and costs of suit, shall be used to offset any license fee increase authorized by Section 33 of this bill.

SEC. 2. Section 13.50 of Chapter 55 of the Statute of 1993 is amended to read:

Sec. 13.50. (a) Notwithstanding any other provision of law, the interest earned by governmental cost funds, except the Contingent Fund of the Medical Board of California, as determined jointly by the Controller and the Director of Finance, for the period July 1, 1993, to June 30, 1994, inclusive, shall be transferred to the unappropriated surplus of the General Fund. This subdivision shall not apply to any governmental cost funds if the use of interest from those funds for General Fund purposes is prohibited by the California Constitution or the United States Constitution.

(b) Notwithstanding any other provision of law, upon order of the Director of Finance, the Controller shall transfer to the General Fund, from surplus money investments, pooled money investments, interest on loans to local agencies, interest on income from other loans, and income from other investments, an amount equal to the interest earned on these investments and loans. This subdivision shall not apply to any interest earned on investments and loans for which the expenditure of interest earnings for General Fund purposes is prohibited by the California Constitution or the United States Constitution.

(c) To the extent that other provisions in this act provide for the transfer of the interest earned by governmental cost funds or on investments and loans, this section shall apply in lieu of those provisions and is intended to supersede those provisions.

SEC. 3. Section 13.70 of Chapter 55 of the Statutes of 1993 is amended to read:

Sec. 13.70. (a) Notwithstanding any other provision of law, revenues derived from the imposition of penalties for the late payment of any fee or tax imposed on any person, firm association, organization, partnership, business trust, corporation, or company that are deposited in each governmental cost fund, as determined jointly by the Controller and the Director of Finance, during the period July 1, 1993, to June 30, 1994, inclusive, shall be transferred to the unappropriated surplus of the General Fund. This section shall not apply to any governmental cost fund if the use of revenues subject to this section that are deposited in any such fund for General Fund purposes is prohibited by the California Constitution or the United States Constitution.

(b) Revenues deposited in the following accounts or funds are exempt from this section:

Code—Account or Fund

(1) 044—Motor Vehicle Account

(2) 758—Contingent Fund of the Medical Board of California

CHAPTER 533

An act to amend Sections 8670.5 and 8670.19 of the Government Code, relating to oil spills.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 8670.5 of the Government Code is amended to read:

8670.5. The Governor shall ensure that the state fully and

adequately responds to all oil spills in marine waters. The administrator, acting at the direction of the Governor, shall implement activities relating to oil spill response, including emergency drills and preparedness and oil spill containment and cleanup. The administrator shall also represent the state in any coordinated response efforts with the federal government.

SEC. 2. Section 8670.19 of the Government Code is amended to read:

8670.19. (a) Within one year of the adoption of regulations pursuant to Section 8670.28, the administrator shall conduct a comprehensive review of all oil spill contingency plans. The administrator shall do both of the following:

(1) Segment the coast into appropriate areas as necessary.

(2) Evaluate the oil spill contingency plans for each area to determine if deficiencies exist in equipment, personnel, training, and any other area determined to be necessary, including those response resources properly authorized for cascading into the area, to ensure the best achievable protection of the coastline, set forth in the state oil spill contingency plan, including the marine oil spill contingency planning section.

(b) If the administrator finds that deficiencies exist, the administrator shall, by the process set forth in Section 8670.31, remand any oil spill contingency plans to the originating party with recommendations for amendments necessary to ensure that the coastline is protected.

(c) Not later than July 1, 1995, the administrator shall report to the Legislature on the changes made to oil spill contingency plans remanded to originating parties pursuant to subdivision (b). The report, which shall be made available, upon request, to members of the Legislature, shall include recommendations on the additional provisions and steps which need to be taken to ensure the best achievable protection of the coastline, with particular attention to remote coastlines where there may be gaps in protection due to inadequate resources. These provisions may include the type, quantity, and location of equipment, the number and training of personnel, and other matters relevant to coastline protection.

CHAPTER 534

An act to add Section 65089.1 to the Government Code, and to add Section 40457 to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. It is the intent of the Legislature that trip reduction plans submitted pursuant to this act shall not be disapproved based solely upon the amount of the public transit subsidy.

SEC. 2. Section 65089.1 is added to the Government Code, to read:

65089.1. (a) For purposes of this section, "plan" means a trip reduction plan or a related or similar proposal submitted by an employer to a local public agency for adoption or approval that is designed to facilitate employee ridesharing, the use of public transit, and other means of travel that do not employ a single-occupant vehicle.

(b) An agency may require an employer to provide rideshare data bases; an emergency ride program; a preferential parking program; a transportation information program; a parking cash-out program, as defined in subdivision (f) of Section 65088.1; a public transit subsidy in an amount to be determined by the employer; bicycle parking areas; and other noncash value programs which encourage or facilitate the use of alternatives to driving alone. An employer may offer, but no agency shall require an employer to offer, cash, prizes, or items with cash value to employees to encourage participation in a trip reduction program as a condition of approving a plan.

(c) Employers shall provide employees reasonable notice of the content of a proposed plan and shall provide the employees an opportunity to comment prior to submittal of the plan to the agency for adoption.

(d) Each agency shall modify existing programs to conform to this section not later than June 30, 1995. Any plan adopted by an agency prior to January 1, 1994, shall remain in effect until adoption by the agency of a modified plan pursuant to this section.

(e) Employers may include disincentives in their plans that do not create a widespread and substantial disproportionate impact on ethnic or racial minorities, women, or low-income or disabled employees.

(f) This section shall not be interpreted to relieve any employer of the responsibility to prepare a plan that conforms with trip reduction goals specified in Division 26 (commencing with Section 39000) of the Health and Safety Code, or the Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(g) This section only applies to agencies and employers within the

South Coast Air Quality Management District.

SEC. 3. Section 40457 is added to the Health and Safety Code, to read:

40457. (a) For purposes of this section, "plan" means a trip reduction plan or a related or similar proposal submitted by an employer to the south coast district for adoption or approval that is designed to facilitate employee ridesharing, the use of public transit, and other means of travel that do not employ a single-occupant vehicle.

(b) The south coast district may require an employer to provide rideshare data bases; an emergency ride program; a preferential parking program; a transportation information program; a parking cash-out program, as defined in subdivision (f) of Section 65088.1 of the Government Code; a public transit subsidy in an amount to be determined by the employer; bicycle parking areas; and other noncash value programs which encourage or facilitate the use of alternatives to driving alone. An employer may offer, but the south coast district shall not require an employer to offer, cash, prizes, or items with cash value to employees to encourage participation in a trip reduction program as a condition of approving a plan.

(c) Employers shall provide employees reasonable notice of the content of a proposed plan and shall provide the employees an opportunity to comment prior to submittal of the plan to the district for adoption.

(d) The south coast district shall modify existing regulations to conform to this section not later than June 30, 1995. Any plan adopted by the south coast district prior to January 1, 1994, shall remain in effect until adoption by the district of a modified plan pursuant to this section.

(e) Employers in the south coast district may include disincentives in their plans that do not create a widespread and substantial disproportionate impact on ethnic or racial minorities, women, or low-income or disabled employees.

(f) This section shall not be interpreted to relieve any employer of the responsibility to prepare a plan that conforms with trip reduction goals specified in this division or the Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 535

An act to amend Section 52 of the Civil Code, and to add Section 12947.5 to the Government Code, relating to discrimination.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 52 of the Civil Code is amended to read:

52. (a) Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51 or 51.5, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than one thousand dollars ($1,000), and any attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51 or 51.5.

(b) Whoever denies the right provided by Section 51.7, or aids, incites, or conspires in that denial, is liable for each and every offense for the actual damages suffered by any person denied that right and, in addition, the following:

(1) An amount to be determined by a jury, or a court sitting without a jury, for exemplary damages.

(2) A civil penalty of twenty-five thousand dollars ($25,000) to be awarded to the person denied the right provided by Section 51.7.

(3) Attorney fees as may be determined by the court.

(c) Whenever there is reasonable cause to believe that any person or group of persons is engaged in conduct of resistance to the full enjoyment of any of the rights hereby secured, and that conduct is of that nature and is intended to deny the full exercise of the rights herein described, the Attorney General, any district attorney or city attorney, or any person aggrieved by the conduct may bring a civil action in the appropriate court by filing with it a complaint. The complaint shall contain the following:

(1) The signature of the officer, or, in his or her absence, the individual acting on behalf of the officer, or the signature of the person aggrieved.

(2) The facts pertaining to the conduct.

(3) A request for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the conduct, as the complainant deems necessary to insure the full enjoyment of the rights herein described.

(d) Whenever an action has been commenced in any court seeking relief from the denial of equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States

on account of race, color, religion, sex, national origin, or disability, the Attorney General or any district attorney or city attorney for or in the name of the people of the State of California may intervene in the action upon timely application if the Attorney General or any district attorney or city attorney certifies that the case is of general public importance. In that action the people of the State of California shall be entitled to the same relief as if it had instituted the action.

(e) Actions under this section shall be independent of any other remedies or procedures that may be available to an aggrieved party.

(f) Any person claiming to be aggrieved by an alleged unlawful practice in violation of Section 51 or 51.7 may also file a verified complaint with the Department of Fair Employment and Housing pursuant to Section 12948 of the Government Code.

(g) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever to any new or existing establishment, facility, building, improvement, or any other structure, or to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(h) For the purposes of this section, "actual damages" means special and general damages. This subdivision is declaratory of existing law.

SEC. 2. Section 12947.5 is added to the Government Code, to read:

12947.5. (a) It shall be an unlawful employment practice for an employer to refuse to permit an employee to wear pants on account of the sex of the employee.

(b) Nothing in this section shall prohibit an employer from requiring employees in a particular occupation to wear a uniform.

(c) Nothing in this section shall prohibit an employer from requiring an employee to wear a costume while that employee is portraying a specific character or dramatic role.

(d) The commission may exempt an employer from the requirements of this section for good cause shown and shall adopt standards and procedures for granting exemptions.

SEC. 3. The Department of Consumer Affairs, by June 1, 1995, shall provide notice to licensees of the State Board of Barbering and Cosmetology that the Unruh Civil Rights Act and other state laws contain prohibitions against gender-based pricing practices, that prices must be based on factors such as difficulty of treatment or service, and that violators of these laws may be required to pay damages of a minimum of one thousand dollars ($1,000) for each violation as specified in Section 52 of the Civil Code.

The department, by June 1, 1998, shall prepare and submit to the Legislature, upon request, a summary of the number and subject of any inquiries or comments by licensees in response to the notice required by this section, and of any gender-based pricing complaints

received by all boards in the department, excluding healing arts boards provided for in Division 2 (commencing with Section 500) of the Business and Professions Code, and by the Department of Fair Employment and Housing.

The department shall develop, by June 1, 1995, and shall make available to the public, consumer information on the problem of gender-based price discrimination.

CHAPTER 536

An act to add Section 13228 to the Water Code, relating to water.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 13228 is added to the Water Code, to read:

13228. (a) Concerning any matter that may be submitted to a regional board by a person or entity that is subject to regulation by more than one regional board, the person or entity may submit the matter to one of those regional boards if both of the following requirements are met:

(1) The person or entity submits a written request to all affected regional boards that one regional board be designated to regulate the matter.

(2) All affected regional boards agree in writing to the designation. Unless the board of any affected regional board denies the request, the executive officer of a regional board may grant a request submitted pursuant to paragraph (1) on behalf of that board.

(b) Notwithstanding subdivision (a), any regional board that is affected by a matter for which a designation is made in accordance with subdivision (a) may take enforcement action with regard to that matter.

CHAPTER 537

An act to amend Sections 16486 and 16489 of the Public Utilities Code, relating to the public utility districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 16486 of the Public Utilities Code is amended to read:

16486. (a) In addition to all other powers, excepting telephone service, authorized by this division, the Kirkwood Meadows Public Utility District may acquire, construct, own, and operate public parking facilities and cable television facilities and may provide snow removal and road maintenance services for all roads open to the public, including, but not limited to, public roads and roads offered for dedication but not accepted, within the district. Prior to providing any snow removal or road maintenance services, the district shall obtain the consent of any public agency owning the roads. Notwithstanding Section 16467, the facilities and services provided in this subdivision need not be operated on a self-sustaining, revenue-producing basis. Revenue to defray the cost of the facilities and services may be raised in any manner authorized by this division.

(b) The Kirkwood Meadows Public Utility District may exercise all of the powers of a mosquito abatement district or vector control district, as set forth in Chapter 5 (commencing with Section 2200) of Division 3 of the Health and Safety Code, necessary for purposes of mosquito abatement or vector control within the service area of the Kirkwood Meadows Public Utility District if all of the following conditions are met:

(1) The district passes an ordinance pursuant to Sections 16072 to 16084, inclusive, authorizing the district to exercise these powers.

(2) The Alpine County local agency formation commission authorizes the district to exercise these powers.

(3) The Alpine County board of supervisors adopts a resolution of intention pursuant to Section 2215.5 of the Health and Safety Code and complies with Sections 2216, 2221, 2222, 2223, and 2224 of the Health and Safety Code, except that the district name need not contain the words "mosquito abatement district" or "vector control district" pursuant to Section 2223 of the Health and Safety Code.

(c) If the Kirkwood Meadows Public Utilities District is authorized to exercise the powers of a mosquito abatement district or vector control district pursuant to subdivision (b), the district shall comply with all requirements of Chapter 5 (commencing with Section 2200) of Division 3 of the Health and Safety Code and the misdemeanor provisions of Section 2292 of the Health and Safety Code shall apply to persons who interfere with mosquito abatement and vector control work done by the Kirkwood Meadows Public Utility District.

SEC. 2. Section 16489 of the Public Utilities Code is amended to read:

16489. (a) The June Lake Public Utility District may exercise all of the powers of a mosquito abatement district or vector control district, as set forth in Chapter 5 (commencing with Section 2200) of

Division 3 of the Health and Safety Code, necessary for purposes of mosquito abatement or vector control within the service area of the June Lake Public Utility District, if the governing board of the mosquito abatement or vector control district, if any, having jurisdiction over mosquito abatement or vector control in the area where the abatement or control efforts are to take place consents to the exercise of those powers by the June Lake Public Utility District.

(b) The district shall comply with all requirements of Chapter 5 (commencing with Section 2200) of Division 3 of the Health and Safety Code and the misdemeanor provisions of Section 2292 of the Health and Safety Code shall apply to persons who interfere with mosquito abatement and vector control work done by the June Lake Public Utility District.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to begin mosquito abatement as soon as possible, and so protect the health of the residents of this district at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 538

An act to add Section 40717.1 to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. It is the intent of the Legislature in enacting this act to provide businesses with greater flexibility in meeting air quality requirements, including burdensome employee rideshare regulations, and to encourage private industry initiative in the development of new cost-effective technologies for mobile source pollution reduction which comply with district regulations.

SEC. 2. Section 40717.1 is added to the Health and Safety Code,

to read:

40717.1. (a) At the time that a district adopts a rule or regulation that imposes a transportation control measure or trip reduction measure on employers, the district, consistent with guidelines adopted by the state board pursuant to Section 40919, shall establish a process under which, within 90 days of receiving a request from an employer, the district shall approve or disapprove an employer-established program that produces the equivalent emission reductions as would be achieved under the district rule or regulation through the use of remote sensing or other methods which identify gross polluters or other high-emitting vehicles and which results in the repair of those vehicles.

(b) An employer-established program approved by a district pursuant to this section shall not impose any new emission reduction requirement on employers beyond those requirements established under current law, but instead shall provide cost-effective alternative methods to meet existing requirements.

(c) Nothing in this section shall require a district to approve a program that would result in the imposition of federal sanctions, including, but not limited to, the loss of federal funds for transportation purposes.

SEC. 3. Section 40717.1 is added to the Health and Safety Code, to read:

40717.1. (a) At the time that a district adopts a rule or regulation that imposes a transportation control measure, trip reduction measure, or other mobile source emission requirement on employers, the district, consistent with guidelines adopted by the state board pursuant to Sections 40916 and 40919, shall establish a process under which, within 90 days of receiving a request from an employer, the district shall approve or disapprove an employer-established program that produces the equivalent emission reductions as would be achieved under the district rule or regulation through the use of remote sensing or other methods which identify gross polluters or other high-emitting vehicles and which results in the repair of those vehicles.

(b) An employer-established program approved by a district pursuant to this section shall not impose any new emission reduction requirement on employers beyond those requirements established under current law, but instead shall provide cost-effective alternative methods to meet existing requirements.

(c) Nothing in this section shall require a district to implement a program that would result in the imposition of federal sanctions, including, but not limited to, the loss of federal funds for transportation requirements.

SEC. 4. Section 3 of this act shall become operative only if Assembly Bill 3242 of the 1993–94 Regular Session of the Legislature is enacted, in which case Section 2 of this act shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to

Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 539

An act to amend Section 40709.6 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 40709.6 of the Health and Safety Code is amended to read:

40709.6. (a) Increases in emissions of air pollutants at a stationary source located in a district may be offset by emission reductions credited to a stationary source located in another district if both stationary sources are located in the same air basin or, if not located in the same air basin, if both of the following requirements are met:

(1) The stationary source to which the emission reductions are credited is located in an upwind district that is classified as being in a worse nonattainment status than the downwind district pursuant to Chapter 10 (commencing with Section 40910).

(2) The stationary source at which there are emission increases to be offset is located in a downwind district that is overwhelmingly impacted by emissions transported from the upwind district, as determined by the state board pursuant to Section 39610 of the Health and Safety Code.

(b) The district, in which the stationary source to which emission reductions are credited is located, shall determine the type and quantity of the emission reductions to be credited.

(c) The district, in which the stationary source at which there are emission increases to be offset is located, shall do both of the following:

(1) Determine the impact of those emission reductions in mitigation of the emission increases in the same manner and to the same extent as the district would do so for fully credited emission reductions from sources located within its boundaries.

(2) Adopt a rule or regulation to discount the emission reductions credited to the stationary source in the other district. The discount shall not be less than the emission reduction for offsets from comparable sources located within the district boundaries.

(d) Any offset credited pursuant to subdivision (a) shall be approved by a resolution adopted by the governing board of the upwind district and the governing board of the downwind district. In adopting a resolution pursuant to this subdivision, each governing board shall consider the impact of the offset on air quality, public health, and the regional economy.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 540

An act to add Sections 20821.6 and 31641.05 to the Government Code, relating to public retirement systems.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. The Legislature finds and declares that California's local governments are experiencing unprecedented fiscal emergencies due to the state's economy and continuing state budget shortfalls. Therefore, the Legislature further finds and declares that local governments need as many options as possible to avoid widespread employee layoffs in the 1994–95, 1995–96, and 1996–97 fiscal years. The ability to encourage early retirements through the granting of additional service credit is one option that should be made available to local governments.

SEC. 2. Section 20821.6 is added to the Government Code, to read:

20821.6. (a) Notwithstanding Section 20818 or any other provision of this part, for only the 1994–95, 1995–96, and 1996–97 fiscal years, when the governing body of a contracting agency, other than a school employer, determines that because of an impending curtailment of service, or change in the manner of performing service, the best interests of the agency would be served by encouraging the retirement of local members, the governing body may adopt a resolution to grant eligible employees additional service credit if the following conditions exist:

(1) The member meets the age and service requirements of Section 20950, is credited with 10 or more years of service, and retires on service retirement on or before a date determined by the

governing body that is within a period that is not more than 120 days after the governing body's adoption of the resolution.

(2) The governing body agrees to transmit to the retirement fund an amount determined by the board that is equal to the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and the amount the member would have received without that service credit and any administrative costs incurred by the system in a manner and time period acceptable to the governing body and the board. However, the payment period shall not exceed five years. If payment in full is not received within 30 days of the invoice, regular interest shall be charged on any unpaid balance.

(b) (1) The resolution shall specify the categories of employees that are eligible to receive the additional service credit and the departments, programs, and position classifications in which employee members would be eligible for the additional service credit.

(2) The resolution shall specify the period of eligibility, and the amount of additional service credit in whole years. The amount of additional service credit shall not be more than four years.

(c) (1) The governing body shall certify either that sufficient positions have been deleted whose total cost equals or exceeds the lump-sum actuarial cost of the additional service credit granted or that all positions vacated due to the additional service credit granted pursuant to this section shall remain vacant for at least five years and until the lump-sum actuarial cost of the additional service credit granted has been recaptured from position vacancy salary savings.

(2) The governing body shall certify to the board the extent to which savings will exceed necessary payments to the board, the specific measures to be taken to assure that outcome, and that the agency has complied with Section 7507. The board may require the governing body to provide verification of its certification through independent review.

(d) At the time the governing body has achieved savings that are more than adequate to meet necessary payments to the board, or five years after commencement of the retirement period specified in paragraph (1) of this section, whichever occurs first, the governing body shall certify to the board the amount of actual savings and the measures taken to achieve the savings. The governing body shall maintain records for each worker retiring pursuant to this section. The board may require the governing body to provide verification of its certification through independent review. The board shall report these certifications to the Controller, who shall summarize the cost and savings information therein for inclusion in his or her annual report prepared pursuant to Sections 7501 through 7504. The Controller shall perform a postaudit to verify that the savings equal or exceed the lump-sum actuarial cost of the additional service granted pursuant to this section. The local contracting agency shall pay the cost of the postaudit.

(e) This section shall not be applicable to any member otherwise eligible if the member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending two years beyond the date of issuance of the governing body's determination or if the member is not eligible to retire without the additional credit available under this section.

(f) Any member who qualifies under this section, upon subsequent reentry into the system or upon any subsequent service under contract or any other basis, shall forfeit the service credit acquired under this section. Any member who qualifies under this section shall not receive temporary reemployment as an annuitant with the public agency from which he or she has received credit under this section for five years following the date of retirement.

(g) No additional service credit shall be granted pursuant to this section on or after July 1, 1997.

SEC. 3. Section 31641.05 is added to the Government Code, to read:

31641.05. (a) Notwithstanding Section 31641.04 or any other provision of this part, for only the 1994–95, 1995–96, and 1996–97 fiscal years, when the board of supervisors, by resolution, determines that because of an impending curtailment of service or change in the manner of performing service, savings of money, or other economic benefit resulting to the county, the best interests of the county would be served, a member shall be eligible to receive additional service credit if all of the following conditions exist:

(1) The member is employed in a job classification, county department, or other county organizational unit included in the resolution adopted by the board of supervisors.

(2) The member is credited with 10 or more years of service and retires on or between dates specified by the board of supervisors in its resolution. In no event shall the specified period exceed 120 days.

(3) The county transmits to the retirement fund an amount determined by the board of retirement that is equal to the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and the amount he or she would have received without that service credit. The transfer to the retirement fund shall be made in a manner and time period acceptable to the county and the board of retirement. However, the payment period shall not exceed five years.

(b) The amount of service credit shall be the amount that the board of supervisors determines, but shall not be more than four years regardless of credited service and shall not exceed the number of years intervening between the date of the member's retirement and the date the member would be required to be retired because of age.

(c) The resolution described in subdivision (a) shall either identify sufficient deleted positions whose total cost equals or exceed the lump-sum actuarial cost of the additional service credit granted

or proclaim that all positions vacated due to the additional service credit granted pursuant to this section shall remain vacant for at least five years and until the lump-sum actuarial cost of the additional service credit granted has been recaptured from position vacancy salary savings.

(d) The board of supervisors shall certify to the board of retirement the extent to which savings will exceed necessary payments to the board of retirement, and the specific measures to be taken to assure that outcome. The board of retirement may require the board of supervisors to provide verification of its certification through independent review.

(e) At the time the county has achieved savings that are more than adequate to meet necessary payments to the board of retirement, or five years after commencement of the retirement period specified in paragraph (2) of this section, whichever occurs first, the board of supervisors shall certify to the retirement board the amount of actual savings and the measures taken to achieve the savings. The board of supervisors shall maintain records for each worker retiring pursuant to this section. The board of retirement may require the board of supervisors to provide verification of its certification through independent review. The board of supervisors shall report these certifications to the Controller, who should summarize the cost and savings information therein in his or her annual report prepared pursuant to Sections 7501 through 7504. The Controller shall perform a postaudit to verify that the savings equal or exceed the lump-sum actuarial cost of the additional service credit granted pursuant to this section. The county shall pay the cost of the postaudit.

(f) A county that elects to make the payment prescribed by subdivision (a) shall make the payment with respect to all eligible employees who retire during the period specified by the board of supervisors.

(g) This section shall not be applicable to any member otherwise eligible if the member receives any unemployment insurance payments during the period six months prior to the period specified pursuant to subdivision (a). This section shall not be applicable to any member if the member is not eligible to retire without the additional credit available under this section.

(h) This section shall not be applicable in any county until it is adopted by ordinance of the board of supervisors. Any county may adopt or readopt this section from time to time as conditions warrant.

(i) Any member who qualifies under this section upon subsequent reentry to county employment shall forfeit the service credit acquired under this section, unless the reentry is a result of a temporary callback pursuant to Section 31680.2, 31680.3, or 31680.6. Any member who receives credit under this section shall not be temporarily employed as an annuitant pursuant to Section 31680.2, 31680.3, or 31680.6 for five years following the date of retirement.

(j) The board of supervisors shall certify to the retirement board

that the county has complied with Section 7507.

(k) This section shall not be subject to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1.

(*l*) No additional service credit shall be granted pursuant to this section on or after July 1, 1997.

CHAPTER 541

An act to amend Section 640 of the Penal Code, relating to crimes.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 640 of the Penal Code is amended to read:

640. (a) Any of the acts described in subdivision (b) is an infraction punishable by a fine not to exceed two hundred fifty dollars ($250) and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days, during a time other than during his or her hours of school attendance or employment, when committed on or in any of the following:

(1) Any facility or vehicle of a public transportation system as defined by Section 99211 of the Public Utilities Code.

(2) Any facility of, or vehicle operated by any entity subsidized by, the Department of Transportation.

(3) Any leased or rented facility or vehicle for which any of the entities described in paragraph (1) or (2) incur costs of cleanup, repair, or replacement as a result of any of those acts.

(b) (1) Evasion of the payment of any fare of the system.

(2) Misuse of any transfer, pass, ticket, or token with the intent to evade the payment of any fare.

(3) Playing sound equipment on or in any system facility or vehicle.

(4) Smoking, eating, or drinking in or on any system facility or vehicle in those areas where those activities are prohibited by that system.

(5) Expectorating upon any system facility or vehicle.

(6) Willfully disturbing others on or in any system facility or vehicle by engaging in boisterous or unruly behavior.

(7) Carrying any explosive or acid, flammable liquid, or toxic or hazardous material in any public transit facility or vehicle.

(8) Urinating or defecating in any system facility or vehicle, except in a lavatory. However, this paragraph shall not apply to any person who cannot comply with this paragraph as a result of a disability, age, or a medical condition.

(9) (A) Willfully blocking the free movement of another person in any system facility or vehicle.

(B) This paragraph (9) shall not be interpreted to affect any lawful activities permitted or first amendment rights protected under the laws of this state or applicable federal law, including, but not limited to, laws related to collective bargaining, labor relations, or labor disputes.

(10) Skateboarding, roller skating, or rollerblading in any system facility, vehicle, or parking structure.

(11) (A) Unauthorized use of a discount ticket or failure to present, upon request from a transit system representative, acceptable proof of eligibility to use a discount ticket, in accordance with Section 99155 of the Public Utilities Code and posted system identification policies when entering or exiting a transit station or vehicle. Acceptable proof of eligibility must be clearly defined in the posting.

(B) In the event that an eligible discount ticket user is not in possession of acceptable proof at the time of request, any citation issued shall be held for a period of 72 hours to allow the user to produce acceptable proof. If the proof is provided, the citation shall be voided. If the proof is not produced within that time period, the citation shall be processed.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 542

An act to add Sections 401.5, 40577, 40577.1, 40577.2, 40577.3, 40577.4, and 40577.5 to the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 401.5 is added to the Food and Agricultural Code, to read:

401.5. The department shall also seek to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber in a way that benefits the general welfare and economy of the state. The department shall also seek to maintain the economic well-being

of agriculturally dependent rural communities in this state.

SEC. 2. Section 40577 is added to the Food and Agricultural Code, to read:

40577. (a) In order to operate economically and reduce expenses that may adversely impact persons subject to this chapter, on or before May 1 of any year, the committee may request the secretary, and the secretary may utilize any appropriate entity, to supply the field staff, office facilities, and supplies necessary to provide inspection services.

(b) Notwithstanding subdivision (a), the secretary is responsible for the administration of this chapter, the establishment of administrative procedures, and the uniformity, accuracy, and integrity of the inspection.

SEC. 3. Section 40577.1 is added to the Food and Agricultural Code, to read:

40577.1. The secretary may establish rules and procedures to guide the entity described in Section 40577. The procedures may provide for all of the following:

(a) Employment, training, supervision, and compensation of inspectors.

(b) Use of existing, and acquisition of additional, equipment and supplies for field or office use.

(c) Leasing of facilities to support inspection activities.

SEC. 4. Section 40577.2 is added to the Food and Agricultural Code, to read:

40577.2. The committee shall not request that the secretary utilize, and the secretary shall not utilize, an entity a majority of whose officers and employees are persons utilizing services provided by the department pursuant to this chapter.

SEC. 5. Section 40577.3 is added to the Food and Agricultural Code, to read:

40577.3. The entity shall keep an accurate record of expenses incurred in performing its responsibilities. Those records shall be available for audit during regular business hours upon request of the secretary.

SEC. 6. Section 40577.4 is added to the Food and Agricultural Code, to read:

40577.4. The secretary may require an entity to correct or cease any activity or function that is determined by the secretary not to be in the public interest, or that is in violation of this chapter, and shall notify the entity in writing of these specific acts.

SEC. 7. Section 40577.5 is added to the Food and Agricultural Code, to read:

40577.5. The secretary shall reimburse the entity for its actual and necessary expenses upon receipt of an invoice approved by the secretary.

CHAPTER 543

An act to amend Sections 33291 and 33295 of, to amend the heading of Article 9 (commencing with Section 33291) of Chapter 4 of Part 1 of Division 15 of, and to add Section 33227 to, the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 33227 is added to the Food and Agricultural Code, to read:

33227. Each person, before engaging in the transportation of unpackaged market milk or unpackaged market milk products (bulk milk hauler), shall obtain a bulk milk hauler tanker permit from the secretary for each tanker that person uses in the bulk transport of unpackaged market milk or unpackaged market milk products. Upon receipt of an application for a permit, the secretary shall cause an inspection to be made of the bulk milk hauler's tanker for which the application is made. A permit shall be issued for each tanker that is in compliance with this division and the standards that are established pursuant to this division. The permit shall be valid for not more than one year, shall be permanently affixed in a conspicuous manner on the rear frame of the tanker for which it is issued, and shall be renewed within one year from the date of issue. The permit shall conform with all requirements of the United States Food and Drug Administration Coded Memorandum implementing the enforcement provisions for permitting and inspection of bulk milk tankers.

This section shall become operative upon the adoption by the United States Food and Drug Administration of the Coded Memorandum implementing enforcement provisions for permitting and inspection of bulk milk tankers. The secretary may adopt regulations necessary to implement this section.

SEC. 2. The heading of Article 9 (commencing with Section 33291) of Chapter 4 of Part 1 of Division 15 of the Food and Agricultural Code is amended to read:

Article 9. Fees Payable to the Secretary

SEC. 3. Section 33291 of the Food and Agricultural Code is amended to read:

33291. Every person that is engaged in the production of market milk outside the jurisdiction of an approved milk inspection service and every person engaged in the processing, manufacture, or distribution of milk, milk products, or products resembling milk

products or in the processing, manufacture, or freezing of ice cream, ice milk, sherbet, or any similar frozen product shall pay a cost-related inspection fee to the secretary.

SEC. 4. Section 33295 of the Food and Agricultural Code is amended to read:

33295. The secretary shall fix the inspection fees for each person, as provided for in Section 33291, not to exceed actual directly related costs for inspection. The basis for fees established for each person specified in Section 33291 shall not include any costs for inspection functions performed by the state for milk products other than market milk products that are the same as, or substantially similar to, inspection functions performed by the United States Department of Agriculture or any other federal or state agency. Costs for inspection shall be determined from time records and audit procedures set forth in written findings pursuant to Section 33296.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 544

An act to amend Sections 75.11, 504, 531.2, and 532 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 75.11 of the Revenue and Taxation Code is amended to read:

75.11. (a) If the change in ownership occurs or the new construction is completed on or after March 1 but on or before May 31, then there shall be two supplemental assessments placed on the supplemental roll. The first supplemental assessment shall be the difference between the new base year value and the taxable value on the current roll. In the case of a change in ownership of the full interest in the real property, the second supplemental assessment shall be the difference between the new base year value and the taxable value to be enrolled on the roll being prepared. If the change in ownership is of only a partial interest in the real property, the

second supplemental assessment shall be the difference between the sum of the new base year value of the portion transferred plus the taxable value on the roll being prepared of the remainder of the property and the taxable value on the roll being prepared of the whole property. For new construction, the second supplemental assessment shall be the value change due to the new construction.

(b) If the change in ownership occurs or the new construction is completed on or after June 1 but before the succeeding March 1, then the supplemental assessment placed on the supplemental roll shall be the difference between the new base year value and the taxable value on the current roll.

(c) If there are multiple changes in ownership or multiple completions of new construction, or both, with respect to the same real property during the same assessment year, then there shall be a net supplemental assessment placed on the supplemental roll, in addition to the assessment pursuant to subdivision (a) or (b). The net supplemental assessment shall be the most recent new base year value less the sum of (1) the previous entry or entries placed on the supplemental roll computed pursuant to subdivision (a) or (b), and (2) the corresponding taxable value on the current roll or the taxable value to be entered on the roll being prepared, or both, depending on the date or dates the change of ownership occurs or new construction is completed as specified in subdivisions (a) and (b).

(d) No supplemental assessment authorized by this section shall be valid, or have any force or effect, unless it is placed on the supplemental roll on or before the applicable date specified in paragraph (1) or (2), as follows:

(1) The fourth July 1 following the July 1 of the assessment year in which either a statement reporting the change in ownership was filed pursuant to Section 480, 480.1, or 480.2, or the new construction was completed.

(2) The sixth July 1 following the July 1 of the assessment year in which either a statement reporting the change in ownership was filed pursuant to Section 480, 480.1, or 480.2, or the new construction was completed, if the penalty provided for in Section 504 is added to the assessment.

For the purposes of this subdivision, "assessment year" means the period beginning annually as of 12:01 a.m. on the first day of March and ending immediately prior to the succeeding first day of March. No limitations period specified in paragraph (1) or (2) shall commence unless the filing or transmittal specified in the relevant paragraph has been completed.

(e) If, before the expiration of the applicable period specified in subdivision (d) for making a supplemental assessment, the taxpayer and the assessor agree in writing to extend the period for making a supplemental assessment, correction, or claim for refund, a supplemental assessment may be made at any time prior to the expiration of that extended period. The extended period may be further extended by successive written agreements entered into

prior to the expiration of the most recent extension.

SEC. 2. Section 504 of the Revenue and Taxation Code is amended to read:

504. (a) There shall be added to any assessment made pursuant to Section 502, except those assessments as are placed on the current roll prior to the time it is originally completed and published, a penalty of 25 percent of the additional assessed value so assessed.

(b) There shall be added to any assessment made pursuant to Section 503, except those assessments as are placed on the current roll prior to the time it is originally completed and published, a penalty of 75 percent of the additional assessed value so assessed.

SEC. 3. Section 531.2 of the Revenue and Taxation Code is amended to read:

531.2. (a) When the property is real property which subsequent to July 1 of the year of escape for purposes of this article, or subsequent to July 1 of the year in which the property should have been lawfully assessed, for purposes of Article 3 (commencing with Section 501), but prior to the date of that assessment and the showing thereof on the secured roll, with the date of entry specified thereon, has (1) been transferred or conveyed to a bona fide purchaser for value, or (2) become subject to a lien of a bona fide encumbrance for value, the escape assessment pursuant to either of these articles shall not create or impose a lien or charge on that real property, but shall be entered on the unsecured roll in the name of the person who would have been the assessee in the year in which it escaped assessment and shall thereafter be treated and collected like other taxes on that roll. The tax rate applicable shall be the secured tax rate of the year in which the property escaped assessment.

(b) If the real property escaped assessment as a result of an unrecorded change in ownership or change in control for which a change in ownership statement required by Section 480, 480.1, or 480.2 is not filed, the assessor shall appraise the property as of the date of transfer and enroll the difference in taxable value for each of the subsequent years on the secured roll, with the date of entry specified thereon. However, if prior to the date of the assessment the property has (1) been transferred or conveyed to a bona fide purchaser for value, or (2) become subject to a lien of a bona fide encumbrance for value, the escape assessment pursuant to this paragraph shall not create or impose a lien or charge on that real property, but shall be entered on the unsecured roll in the name of the person who would have been the assessee in the year in which it escaped assessment and shall thereafter be treated and collected like other taxes on that roll. The tax rate applicable shall be the secured rate of the year in which the property escaped assessment. "Assessment year" means the period defined in Section 118.

In the event of a failure to file a change in ownership statement required by Section 480, 480.1, or 480.2, the interest provided in Section 506 may, by the order of the board of supervisors, be added.

(c) (1) Taxes resulting from escape assessments shall be prorated

pursuant to paragraphs (2) to (5), inclusive, only if the board of supervisors of a county has adopted a resolution specifying that taxes shall be prorated pursuant to this subdivision.

(2) When real property has been transferred or conveyed to a bona fide purchaser for value subsequent to July 1 of the year of escape for purposes of this article, or subsequent to July 1 of the year in which the property should have been lawfully assessed, for purposes of Article 3 (commencing with Section 501), taxes resulting from escape assessments pursuant to this section shall be prorated between the following:

(A) The person who would have been the assessee if the change in ownership had not occurred.

(B) The person who purchased the property.

(3) If the real property has been transferred or conveyed to a bona fide purchaser for value more than once during the year of escape or assessment, each owner of record during that period shall be liable for a pro rata share of taxes based on the length of time during that period each bona fide purchaser was the record owner of that real property.

(4) When the assessor has identified the fact and amount of the escape assessment, the assessor shall identify the owners of record during the year of escape or assessment and the dates of ownership for each owner.

(5) The auditor shall compute the respective prorated shares of taxes for each owner of record. The share of taxes of the current owner of the real property shall be placed on the secured roll as a lien on the parcel for which the escaped assessment was discovered. The share of taxes of any previous owner during the year of escape or assessment shall be entered on the unsecured roll.

SEC. 4. Section 532 of the Revenue and Taxation Code is amended to read:

532. (a) Except as provided in subdivision (b), any assessment to which the penalty provided for in Section 504 must be added shall be made within six years after July 1 of the assessment year in which the property escaped taxation or was underassessed, and any other assessment made pursuant to either Article 3 (commencing with Section 501) or this article shall be made within four years after July 1 of the assessment year in which the property escaped taxation or was underassessed.

(b) In the case where property has escaped taxation, in whole or in part, or has been underassessed, following a change in ownership, the applicable limitations period specified in subdivision (a) shall not commence until July 1 of the assessment year in which a change in ownership statement, as required by Section 480, 480.1, or 480.2, is filed with respect to the event giving rise to the escape assessment or underassessment.

(c) For purposes of this section, "assessment year" means the period defined in Section 118.

CHAPTER 545

An act to amend Sections 12794, 12797, 12798, 12798.6, 55861.7, and 56571.7 of, to amend and renumber the heading of Chapter 1 (commencing with Section 12501) of Division 7 of, to add Section 12536 to, and to add Chapter 1 (commencing with Section 12500) to Division 7 of, and to repeal Section 12798.4 of, the Food and Agricultural Code, and to amend Section 26506.6 of the Health and Safety Code, relating to food and agriculture.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. The heading of Chapter 1 (commencing with Section 12501) of Division 7 of the Food and Agricultural Code is amended and renumbered to read:

CHAPTER 1.5. PRODUCE CARRYING PESTICIDE RESIDUE

SEC. 2. Chapter 1 (commencing with Section 12500) is added to Division 7 of the Food and Agricultural Code, to read:

CHAPTER 1. DEFINITIONS

12500. As used in Chapter 1.5 (commencing with Section 12501), Chapter 2 (commencing with Section 12751) except Article 2.5 (commencing with Section 12786), Chapter 3 (commencing with Section 14001), Chapter 3.5 (commencing with Section 14101), Chapter 3.6 (commencing with Section 14151) and Chapter 7 (commencing with Section 15201), "department" means the Department of Pesticide Regulation. As used in Article 2.5 (commencing with Section 12786) of Chapter 2, Chapter 4 (commencing with Section 14200), Chapter 5 (commencing with Section 14501), and Chapter 6 (commencing with Section 14901), "department" means the Department of Food and Agriculture.

12500.5. "Director" means the Director of Pesticide Regulation.

12500.6. "Secretary" means the Secretary of Food and Agriculture.

SEC. 3. Section 12536 is added to the Food and Agricultural Code, to read:

12536. (a) The director, by regulation, shall establish a pest management advisory committee, specifying, as appropriate, the scope and purpose of its advisory role, membership requirements, and operating procedures. The director, or his or her designee, shall serve as chairperson of the committee and the secretary, or his or her designee, shall serve as vice-chairperson of the committee. At a minimum, the committee shall assist the department in identifying,

facilitating, and promoting environmentally sound pest management practices and pest management systems.

(b) Funds in the Food Safety Account in the Department of Pesticide Regulation Fund may be expended, upon appropriation for pest management research purposes, and upon the joint decision of the chairperson and vice-chairperson, to carry out the recommendations of the pest management advisory committee.

SEC. 3.5. Section 12794 of the Food and Agricultural Code is amended to read:

12794. Members of the research and screening committees shall serve without compensation, but shall be reimbursed for all necessary expenses incurred in the performance of their duties and approved by the secretary.

SEC. 4. Section 12797 of the Food and Agricultural Code is amended to read:

12797. To the extent that funding is available, the secretary shall maintain a program to develop new methods and modify existing methods for testing produce for the presence of pesticide residues. The secretary may consult with representatives of the federal Food and Drug Administration, the State Department of Health Services, the Department of Pesticide Regulation, public and private institutions of higher education, other laboratories, or any other entity he or she deems appropriate. The secretary shall focus his or her review on analytical methods for pesticide residues that are not detectable on existing multiple-residue screens, and on pesticide residue detection methods that the secretary deems are difficult to accurately identify and quantify due to time, equipment, or expense.

SEC. 5. Section 12798 of the Food and Agricultural Code is amended to read:

12798. (a) The department shall establish a competitive grants program to make funds available to qualified public and private entities to conduct pest management research projects. All of the research related to pest management funded by the department shall be administered pursuant to this program.

(b) Research conducted pursuant to this section shall have the further development of alternative pest management practices and methods and the further development of pest exclusion detection and eradication methods as priorities. Prior to making research awards, the department shall assess existing research activities and developments in integrated pest management, alternatives to pesticides, and other alternative pest management practices and methods, including, but not limited to, cultural, biological, and biotechnological research.

(c) (1) The secretary shall establish a Pest Management Research Committee which shall award all funds under the competitive grants program.

(2) The primary objective of the committee is the further development of pest prevention activities and alternative pest management practices, techniques, and methods that exclude

serious pests, as determined by the committee, which detect and quickly eliminate small infestations of foreign pests, and which reduce pesticide use, minimize or eliminate pesticide residues, or result in the use of safer pesticides. In achieving that objective, the committee shall encourage the development and use of biological controls, integrated pest management, biotechnology, cultural, pest prevention, and other alternative pest management methods that are environmentally sound and economically viable.

(3) The committee shall consist of the following 12 persons, who shall serve at the pleasure of the secretary:

(A) The Secretary of Food and Agriculture or his or her designee, who shall serve as chairperson.

(B) The President of the University of California or his or her designee.

(C) The Chancellor of the California State University or his or her designee.

(D) Two members who represent the agricultural community, one of whom is an experienced organic farmer and one of whom is knowledgeable and experienced in alternative pest management techniques.

(E) Two members who represent pest management researchers, one of whom represents California's public and private colleges and universities and one of whom represents California's independent research community, both of whom are knowledgeable in pest prevention, control, eradication, and pest management.

(F) One member who represents public interest organizations, qualified in environmental or public health, or both, and knowledgeable in alternative pest management techniques.

(G) One member who represents the Office of Environmental Health Hazard Assessment, with experience in public health or toxicology.

(H) One member who represents county agricultural commissioners, knowledgeable and experienced in alternative pest management techniques and pest prevention, control, and eradication.

(I) One member who represents the Department of Pesticide Regulation, with experience in pest management systems.

(J) One member who represents the State Department of Health Services, with experience in public health.

(4) The committee shall award funds based upon a competitive application process that meets the eligibility of fulfilling, and has the ability to fulfill, the objectives of this section.

(5) The approval of research proposals shall be made by a majority vote of the membership of the committee.

(d) For any proposals funded pursuant to this section, the department shall require reasonable accountability, including performance standards, periodic reports, deadlines, and payments conditioned on compliance with performance standards and deadlines.

(e) Funding for second and subsequent years of a multiyear award shall be contingent upon satisfactory completion by the grantee of the prior year grant awards.

(f) In order to facilitate the utilization of pest management practices and methods developed pursuant to this section, the secretary shall cooperate with qualified public and private entities to provide outreach consultation, information dissemination, and educational services to the agricultural community and other interested parties.

SEC. 6. Section 12798.4 of the Food and Agricultural Code is repealed.

SEC. 7. Section 12798.6 of the Food and Agricultural Code is amended to read:

12798.6. The secretary shall establish a Pest Science and Technology Screening Committee, which shall function as a scientific peer review committee on exotic pest research proposals submitted pursuant to Section 12798. The screening committee shall conduct and provide a thorough evaluation of the scientific merit, environmental soundness, and economic viability of each proposal. The committee shall meet at the request of the secretary and after reviewing all current proposals shall make recommendations to the Pest Management Research Committee established pursuant to Section 12798 as to which proposals should be funded. The committee shall consist of the following members:

(a) Five members who represent California's public and private colleges and universities or private research community, each of whom possesses a degree in entomology, plant pathology, or environmental studies, and who are knowledgeable, technically qualified, and experienced in exotic pest biology and pest exclusion, detection, and eradication research.

(b) One member who represents the department, with experience in pest prevention.

(c) One member who represents the Office of Environmental Health Hazard Assessment, with experience in public health or toxicology.

(d) One member who represents the State Department of Health Services, with experience in public health.

SEC. 8. Section 55861.7 of the Food and Agricultural Code is amended to read:

55861.7. (a) Notwithstanding Section 55861.5, in addition to the fee paid pursuant to Section 55861, each applicant for a license shall pay a 50-percent surcharge to the Director of Pesticide Regulation, in a form and manner prescribed by the director.

(b) Subdivision (a) does not apply to those applicants for licenses the Department of Pesticide Regulation determines should not be assessed due to a determination of limited applicability pursuant to Sections 12535, 12536, 12797, 12798, 12979, 13134, and 13135 of this code or Section 26505.5 or 26506.6 of the Health and Safety Code to those licenses, or because substantial economic hardship would result

to individual applicants.

(c) Each applicant for a license issued pursuant to this chapter who is also registered pursuant to Article 1.5 (commencing with Section 26506) of Chapter 5 of Division 21 of the Health and Safety Code, may, at a date no later than the issuance of the license, submit a copy of the processed food registration certificate issued to that applicant by the State Department of Health Services pursuant to that Article 1.5 in lieu of the payment of the surcharge required pursuant to subdivision (a).

(d) Revenue received pursuant to this section shall be deposited in the Food Safety Account in the Department of Pesticide Regulation Fund. A penalty of 10 percent per month shall be added to any surcharge not paid when due.

(e) If the applicant is not issued a license, the director shall return the surcharge to the applicant, and for that purpose, notwithstanding Section 13340 of the Government Code, the amount of funds necessary to refund the surcharge is continuously appropriated, without regard to fiscal year, to the director.

SEC. 9. Section 56571.7 of the Food and Agricultural Code is amended to read:

56571.7. Notwithstanding Section 56571.5, in addition to the fee paid pursuant to Section 56571, each applicant for a license shall pay a 50-percent surcharge to the Director of Pesticide Regulation, in a form and manner prescribed by the director. This section shall not apply to those applicants for licenses the Department of Pesticide Regulation determines should not be assessed due to a determination of limited applicability pursuant to Sections 12535, 12536, 12797, 12798, 12979, 13134, and 13135 of this code or Section 26505.5 or 26506.6 of the Health and Safety Code to those licenses, or because substantial economic hardship would result to individual applicants. Revenue received pursuant to this section shall be deposited in the Food Safety Account in the Department of Pesticide Regulation Fund. A penalty of 10 percent per month shall be added to any surcharge not paid when due. If the applicant is not issued a license, the director shall return the surcharge to the applicant, and for that purpose, notwithstanding Section 13340 of the Government Code, the amount of funds necessary to refund the surcharge is continuously appropriated, without regard to fiscal year, to the director.

SEC. 10. Section 26506.6 of the Health and Safety Code is amended to read:

26506.6. In addition to the fee paid pursuant to Section 26506.2, each registrant shall pay a surcharge of one hundred dollars ($100) to the Department of Pesticide Regulation, in a form and manner that the Director of Pesticide Regulation prescribes. This section shall not apply to those registrants the Director of Pesticide Regulation determines should not be assessed due to a determination of limited applicability pursuant to Sections 12535, 12536, 12797, 12798, 13134, and 13135 of the Food and Agricultural Code or Section

26505.5 of this code to those registrants, or because substantial economic hardship would result to individual registrants. Revenue received pursuant to this section shall be deposited in the Food Safety Account in the Department of Pesticide Regulation Fund. A penalty of 10 percent per month shall be added to any surcharge not paid when due.

SEC. 11. The Department of Pesticide Regulation shall determine by April 30, 1995, those applicants for licenses who will not be assessed the surcharge imposed by Sections 55861.7 and 56571.7 of the Food and Agricultural Code due to a determination of limited applicability pursuant to Sections 12535, 12536, 12797, 12798, 12979, 13134, and 13135 of the Food and Agricultural Code or Section 26505.5 or 26506.6 of the Health and Safety Code.

CHAPTER 546

An act to amend Section 1506 of the Health and Safety Code, relating to foster care.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 1506 of the Health and Safety Code is amended to read:

1506. (a) (1) Any holder of a valid license issued by the department that authorizes the licensee to engage in any foster family agency functions, may use only a certified family home that has been certified by that agency or a licensed foster family home approved for this use by the licensing county pursuant to Section 1506.5.

(2) Any home selected and certified for the reception and care of children by that licensee shall not, during the time it is certified and used only by that agency for these placements or care, be subject to Section 1508. A certified family home may not be concurrently licensed as a foster family home or as any other licensed residential facility.

(3) A child with a developmental disability who is placed in a certified family home by a foster family agency that is operating under agreement with the regional center responsible for that child may remain in the certified family home after the age of 18 years. The determination regarding whether and how long he or she may remain as a resident after the age of 18 years shall be made through the agreement of all parties involved, including the resident, the foster parent, the foster family agency social worker, the resident's regional center case manager, and the resident's parent, legal guardian, or conservator, as appropriate. This determination shall

include a needs and service plan that contains an assessment of the child's needs to ensure continued compatibility with the other children in placement. The needs and service plan shall be completed no more than six months prior to the child's eighteenth birthday. The assessment shall be documented and maintained in the child's file with the foster family agency.

(b) (1) A foster family agency shall certify to the department that the home has met the department's licensing standards. A foster family agency may require a family home to meet additional standards or be compatible with its treatment approach.

(2) The foster family agency shall issue a certificate of approval to the certified family home upon its determination that it has met the standards established by the department and before the placement of any child in the home. The certificate shall be valid for a period not to exceed one year. The annual recertification shall require a certified family home to complete at least 12 hours of structured applicable training or continuing education. At least one hour of training during the first six months following initial certification shall be dedicated to meeting the requirements of paragraph (1) of subdivision (b) of Section 11174.1 of the Penal Code.

(3) If the agency determines that the home no longer meets the standards, it shall notify the department and the local placing agency.

(c) The department shall develop licensing regulations differentiating between foster family agencies that provide treatment of children in foster families and those that provide nontreatment services.

(d) As used in this chapter, "certified family home" means a family residence certified by a licensed foster family agency and issued a certificate of approval by that agency as meeting licensing standards, and used only by that foster family agency for placements.

(e) (1) Requirements for social work personnel for a foster family agency shall be a master's degree from an accredited or state approved graduate school in social work or social welfare, or equivalent education and experience, as determined by the state department.

(2) Persons who possess a master's degree from an accredited or state approved graduate school in any of the following areas, or equivalent education and experience, as determined by the state department, shall be considered to be qualified to perform social work activities in a foster family agency:

(A) Marriage, family, and child counseling.

(B) Child psychology.

(C) Child development.

(D) Counseling psychology.

(E) Social psychology.

(F) Clinical psychology.

(G) Educational psychology, consistent with the scope of practice as described in Section 4986.10 of the Business and Professions Code.

(H) Education, with emphasis on counseling.

(f) (1) In addition to the degree specifications in subdivision (e), all of the following coursework and field practice or experience, as defined in departmental regulations, shall be required of all new hires for the position of social work personnel effective January 1, 1995:

(A) At least three semester units of field practice at the master's level or six months' full-time equivalent experience in a public or private social service agency setting.

(B) At least nine semester units of coursework related to human development or human behavior, or, within the first year of employment, experience working with children and families as a major responsibility of the position under the supervision of a supervising social worker.

(C) At least three semester units in working with minority populations or six months of experience in working with minority populations or training in cultural competency and working with minority populations within the first six months of employment as a condition of employment.

(D) At least three semester units in child welfare or at least six months of experience in a public or private child welfare social services setting for a nonsupervisory social worker. A supervising social worker shall have two years' experience in a public or private child welfare social services setting.

(2) (A) Persons who do not meet the requirements specified in subdivision (e) or (f) may apply for an exception as provided for in subdivisions (g) and (h).

(B) Exceptions granted by the department prior to January 1, 1995, shall remain in effect.

(3) (A) Persons who are hired as social work personnel on or after January 1, 1995, who do not meet the requirements listed in this subdivision shall be required to successfully meet those requirements in order to be employed as social work personnel in a foster family agency.

(B) Employees who were hired prior to January 1, 1995, shall not be required to meet the requirements of this subdivision in order to remain employed as social work personnel in a foster family agency.

(4) Coursework and field practice or experience completed to fulfill the degree requirements of subdivision (e) may be used to satisfy the requirements of this subdivision.

(g) Individuals seeking an exception to the requirements of subdivision (e) or (f) based on completion of equivalent education and experience shall apply to the department by the process established by the department.

(h) The State Department of Social Services shall be required to complete the process for the exception to minimum education and experience requirements described in subdivisions (e) and (f) within 30 days of receiving the exception application of social work personnel or supervising social worker qualifications from the foster

family agency.

(i) The department shall review the feasibility of instituting a licensure category to cover foster homes that are established specifically to care for and supervise adults with developmental disabilities, as defined in subdivision (a) of Section 4512 of the Welfare and Institutions Code, to prevent the institutionalization of those individuals.

(j) For purposes of this section, "social work personnel" means supervising social workers as well as nonsupervisory social workers.

CHAPTER 547

An act to add Section 6902.2 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 6902.2 is added to the Revenue and Taxation Code, to read:

6902.2. (a) (1) In lieu of claiming the credit allowed by Section 17053.49 or 23649, a person who has paid sales tax reimbursement to a retailer or use tax on a purchase or purchases of property for which a credit may be allowed pursuant to those sections, may file a claim for refund equal to the credit amount that would otherwise be allowed pursuant to those sections. Any claim so filed shall be submitted to the board on a form prescribed by the board, shall be filed no earlier than the date a claim could have been made for a tax credit or carryover of a credit under Section 17053.49 or 23649, whichever is applicable, and shall be for an amount not in excess of the amount of the credit that could have been used to offset personal income or bank or corporation tax liability. A claim for refund shall, unless the sale or use of the property is otherwise exempt under this part, be accompanied by proof of payment of the tax to a retailer, including, but not limited to, a copy of an invoice or purchase contract that indicates the following:

(A) The date on which the purchase occurred.

(B) A description of the property purchased.

(C) The price paid for the property.

(D) The amount of tax paid with respect to the purchase.

(2) In the case of a person who has self-reported use tax to the board, the claim for refund shall also indicate the amount of use tax paid and the period for which that tax was remitted.

(3) Any person who claims a refund under this section shall make an irrevocable election to waive the equivalent amount of credit allowed under Section 17053.49 or 23649. Any refund claimed under

this section shall be in lieu of claiming any credit under Section 17053.49 or 23649. Any person electing to file a claim for refund pursuant to this section shall provide a copy of the personal or bank and corporation tax return on which the tax liability was assessed for which the in-lieu refund is being claimed under this section.

(b) No interest shall be paid on any refund made pursuant to this section.

(c) Notwithstanding Section 6961, the board may recover any refund or part thereof that is erroneously made pursuant to this section. In recovering any erroneous refund made pursuant to this section, the board, in its discretion, may issue a deficiency determination in accordance with Article 2 (commencing with Section 6481) or Article 4 (commencing with Section 6536) of Chapter 5. Except in the case of fraud, that determination shall be made within three years from the last day of the month following the quarterly period in which the board approved the refund.

(d) The board shall provide an annual listing to the Franchise Tax Board, in a form and manner agreed upon by the board and the Franchise Tax Board, of the persons who during the year have claimed a refund of sales or use tax under this section and the amount of the refund issued to each person.

(e) Any refund approved by the board pursuant to this section shall be payable from the General Fund.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 548

An act to amend Sections 25201.6, 25205.2, 25205.4, 25205.7, and 25205.12 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 25201.6 of the Health and Safety Code is amended to read:

25201.6. (a) For purposes of this section and Section 25205.2, the following terms have the following meaning:

(1) "Series A standardized permit" means a permit issued to a facility that meets one of the following conditions:

(A) The total influent volume of liquid hazardous waste treated is greater than 50,000 gallons per calendar month.

(B) The total volume of solid hazardous waste treated is greater than 100,000 pounds per calendar month.

(C) Where both liquid and solid hazardous wastes are being treated, either the total volume of liquid waste treated exceeds the

volume specified in subparagraph (A), or the total volume of solid hazardous waste treated exceeds the volume specified in subparagraph (B).

(D) The total facility storage design capacity is greater than 500,000 gallons for liquid hazardous waste.

(E) The total facility storage design capacity is greater than 500 tons for solid hazardous waste.

(F) Where both liquid and solid hazardous waste are being stored, the total volume of liquid waste stored exceeds the volume specified in subparagraph (D), or the total volume of solid hazardous waste stored exceeds the volume specified in subparagraph (E).

(G) A volume of liquid or solid hazardous waste is stored at the facility for more than one calendar year.

(2) "Series B standardized permit" means a permit issued to a facility that does not store liquid or solid hazardous waste of any period of more than one calendar year, and that meets one of the following conditions:

(A) The total influent volume of liquid hazardous waste treated is greater than 5,000 gallons but less than 50,000 gallons per calendar month.

(B) The total volume of solid hazardous waste treated is greater than 10,000 pounds but less than 100,000 pounds per calendar month.

(C) Where both liquid and solid hazardous wastes are being treated, the total volume of liquid hazardous waste treated does not exceed the volume specified in subparagraph (A), and the volume of solid hazardous waste treated does not exceed the volume specified in subparagraph (B).

(D) The total facility storage design capacity is greater than 50,000 gallons but less than 500,000 gallons for liquid hazardous waste.

(E) The total facility storage design capacity is greater than 100,000 pounds but less than 500 tons for solid hazardous waste.

(F) Where both liquid and solid hazardous wastes are being stored, the total volume of liquid hazardous waste stored does not exceed the volume specified in subparagraph (D), and the total volume of solid hazardous waste stored does not exceed the volume specified in subparagraph (E).

(3) "Series C standardized permit" means a permit issued to a facility that does not store liquid or solid hazardous waste for any period for more than one calendar year, that, except as provided in subparagraph (G), does not treat or store reactive, ignitable or extremely hazardous waste, that does not conduct thermal treatment of hazardous waste, with the exception of evaporation, and meets one of the following conditions:

(A) The total influent volume of liquid hazardous waste treated does not exceed 5,000 gallons per calendar month.

(B) The total volume of solid hazardous waste treated does not exceed 10,000 pounds per calendar month.

(C) Where both liquid and solid hazardous wastes are being treated, the total volume of liquid hazardous waste treated does not

exceed the volume specified in subparagraph (A), and the total volume of solid hazardous wastes treated does not exceed the volume specified in subparagraph (B).

(D) The total facility storage design capacity does not exceed 50,000 gallons for liquid hazardous waste.

(E) The total facility storage design capacity does not exceed 100,000 pounds for solid hazardous waste.

(F) Where both liquid and solid hazardous wastes are being stored, the total volume of liquid hazardous waste stored does not exceed the volume specified in subparagraph (D) and the total volume of solid hazardous waste stored does not exceed the volume specified in subparagraph (E).

(G) Notwithstanding any other provision of this paragraph, a permanent household hazardous waste collection facility operating pursuant to a series C standardized permit may store and bulk reactive, ignitable, and extremely hazardous waste.

(b) The department shall adopt regulations specifying standardized hazardous waste facilities permit application forms that may be completed by an offsite non-RCRA series A, B, or C treatment, storage, or treatment and storage facility, in lieu of other hazardous waste facilities permit application procedures set forth in regulations. The department shall not issue permits under this section to specific classes of facilities unless the department finds that doing so will not create a competitive disadvantage to a member or members of that class which were in compliance with the permitting requirements which were in effect on September 1, 1992.

(c) The regulations adopted pursuant to subdivision (b) shall include all of the following:

(1) Require that the standardized permit notification be submitted to the department on or before October 1, 1993, for facilities existing on or before September 1, 1992. The standardized permit notification shall include, at a minimum, the information required for a Part A application as described in Section 66270.13 of Title 22 of the California Code of Regulations.

(2) Require that the standardized permit application be submitted to the department within six months of the submittal of the standardized permit notification, except that a facility that submits a notification prior to October 1, 1993, may submit a permit application on or before April 1, 1994. The standardized permit application shall require, at a minimum, that the following information be submitted to the department for review prior to the final permit determination:

(A) A description of the treatment and storage activities to be covered by the permit, including the type and volumes of waste, the treatment process, equipment description, and design capacity.

(B) A copy of the closure plan as required by paragraph (13) of subdivision (b) of Section 66270.14 of Title 22 of the California Code of Regulations.

(C) A description of the corrective action program, as required by

Section 25200.10.

(D) Financial responsibility documents specified in paragraph (17) of subdivision (b) of Section 66270.14 of Title 22 of the California Code of Regulations.

(E) A copy of the topographical map as specified in paragraph (18) of subdivision (b) of Section 66270.14 of Title 22 of the California Code of Regulations.

(F) A description of the individual container, and tank and containment system, and of the engineer's certification, as specified in Sections 66270.15 and 66270.16 of Title 22 of the California Code of Regulations.

(G) Documentation of compliance, if applicable, with the requirements of Article 8.7 (commencing with Section 25199).

(3) Require that a facility operating pursuant to a standardized permit comply with the liability assurance requirements in Section 25200.1.

(4) Specify which of the remaining elements of the permit application as described in subdivision (b) of Section 66270.14 of the California Code of Regulations shall be the subject of a certification of compliance by the applicant.

(5) Establish a procedure for imposing an administrative penalty pursuant to Section 25187, in addition to any other penalties provided by this chapter, upon an owner or operator of an offsite non-RCRA treatment or storage facility who does not submit a standardized permit notification to the department on or before October 1, 1993, pursuant to paragraph (1), and who continues to operate the facility without obtaining a hazardous waste facilities permit or other grant of authorization from the department after October 1, 1993. In determining the amount of the administrative penalty to be assessed, the regulations shall require the amount to be based upon the economic benefit gained by that owner or operator as a result of failing to comply with this section.

(6) Require that a facility operating pursuant to a standardized permit comply, at a minimum, with the interim status facility operating requirements specified in the regulations adopted by the department, except that the regulations adopted pursuant to this section may specify financial assurance amounts necessary to adequately respond to damage claims at levels that are less than those required for interim status facilities, if the department determines that lower financial assurance levels are appropriate.

(d) (1) Any regulations adopted pursuant to this section may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) On and before January 1, 1995, the adoption of the regulations pursuant to paragraph (1) is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(e) The department shall take final action on each standardized permit application within 18 months after the application is submitted to the department. The department may not grant a permit under this section unless the department has determined the adequacy of the material submitted with the application and has conducted an inspection of the facility and determined all of the following:

(1) The treatment process is an effective method of treating the waste, as described in the permit application.

(2) The corrective action plan is appropriate for the facility.

(3) The financial assurance is sufficient for the facility.

(f) Interim status shall not be granted to a facility which does not submit a standardized permit notification on or before October 1, 1993. Interim status shall be revoked if the permit application is not submitted within six months of the permit notification. Interim status granted to any facility pursuant to this section and Sections 25200.5 and 25200.9 shall terminate upon a final permit determination or October 1, 1995, whichever date is earlier. An offsite non-RCRA treatment, storage, or treatment and storage facility operating pursuant to interim status which applies for a permit pursuant to this section shall pay fees to the department in an amount equal to the fees established by subdivision (e) of Section 25205.4 for the same size and type of facility.

(g) A facility treating used oil or solvents, or which engages in incineration, thermal destruction, or any land disposal activity, is not eligible for a standardized permit pursuant to this section.

(h) Offsite non-RCRA treatment facilities operating pursuant to this section shall comply with Article 4 (commencing with Section 66270.40) of Chapter 20 of Division 4.5 of Title 22 of the California Code of Regulations.

(i) (1) The department shall require an owner or operator applying for a standardized permit to complete and file a phase I environmental assessment with the application. However, if a RCRA facility assessment has been performed by the department, the assessment shall be deemed to satisfy the requirement of this subdivision to complete and file a phase I environmental assessment, and the facility shall not be required to submit a phase I environmental assessment with its application.

(2) (A) For purposes of this subdivision, the phase I environmental assessment shall include a preliminary site assessment, as described in subdivision (b) of Section 25200.14, except that the phase I environmental assessment shall also include a certification, signed, except as provided in subparagraph (B), by the owner, and also by the operator if the operator is not the owner, of the facility and an independent professional engineer, geologist, or environmental assessor registered in the state.

(B) Notwithstanding subparagraph (A), the certification for a permanent household waste collection facility may be signed by any professional engineer, geologist, or environmental assessor

registered in the state, including, but not limited to, such a person employed by the governmental entity, but if the facility owner is not a governmental entity, the engineer, geologist, or assessor signing the certification shall not be employed by, or be an agent of, the facility owner.

(3) The certification specified in paragraph (2) shall state whether evidence of a release of hazardous waste or hazardous constituents has been found.

(4) If evidence of a release has been found, the facility shall complete a detailed site assessment to determine the nature and extent of any contamination resulting from the release and shall submit a corrective action plan to the department, within one year of submittal of the standardized permit application.

(j) The department shall establish an inspection program to identify, inspect, and bring into compliance any non-RCRA treatment, storage, or treatment and storage facility which is operating without a permit or other grant of authorization from the department for that treatment or storage activity.

(k) An offsite non-RCRA treatment, storage, or treatment and storage facility authorized to operate pursuant to a hazardous waste facilities permit issued pursuant to Section 25200 may operate pursuant to a series A, B, or C standardized permit by completing the appropriate permit modification procedure specified in the regulations for such a modification.

(*l*) Notwithstanding any other provision of law, the permit modification fee imposed pursuant to subdivision (i) of Section 25205.7 for a modification made pursuant to subdivision (k) shall be the appropriate class 1, 2, or 3 standardized permit modification fee specified in subdivision (i) of Section 25205.7.

SEC. 2. Section 25205.2 of the Health and Safety Code is amended to read:

25205.2. (a) Except as provided in subdivisions (c) and (h), in addition to the fees specified in Section 25174.1, each operator of a facility shall pay a facility fee for each reporting period, or any portion thereof, to the board based on the size and type of the facility, as specified in Section 25205.4. On or before January 31 of each calendar year, the department annually shall notify the board of all known facility operators by facility type and size. The department shall also notify the board of any operator issued a permit or grant of interim status within 30 days after a permit or grant of interim status is issued to the operator. The fee specified in this section does not apply to facilities operating pursuant to a permit-by-rule, as specified in Section 25205.12.

(b) The board shall deposit all fees collected pursuant to subdivision (a) in the Hazardous Waste Control Account in the General Fund. The fees so deposited may be expended by the department, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25174.

(c) Notwithstanding subdivision (a), a person who is issued a

variance by the department from the requirement of obtaining a hazardous waste facilities permit or grant of interim status is not subject to the fee, for any reporting period following the reporting period in which the variance was granted by the department.

(d) Operators subject to facility fee liability pursuant to this section shall pay the following amounts:

(1) The operator shall pay the applicable facility fee for each reporting period in which the facility actually engaged in the treatment, storage, or disposal of hazardous waste.

(2) The operator shall pay the applicable facility fee for one additional reporting period immediately following the final reporting period in which the facility actually engaged in that treatment or storage. For the 1994 reporting period and thereafter, the facility's size for that additional reporting period shall be deemed to be the largest size at which the facility has ever been subject to the fee. If the department previously approved a unit or portion of the facility for a variance, closure, or permit-by-rule, the facility's size for that reporting period shall be deemed to be its largest size since the department granted the approval.

(3) The operator of a disposal facility shall pay twice the applicable facility fee for one additional reporting period immediately following the final reporting period in which the facility actually engaged in disposal of hazardous waste.

(4) For the 1994 reporting period and thereafter, a facility shall not be deemed to have stopped treating, storing, or disposing of hazardous waste unless it has actually ceased that activity and has notified the department of its intent to close.

(5) If the reporting period which immediately followed the final reporting period in which a facility actually engaged in the treatment, storage, or disposal of the hazardous waste was the six-month period from July 1, 1991, through December 31, 1991, the operator shall be subject to twice the fee otherwise applicable to that operator for that reporting period under paragraphs (2) and (3).

(e) No facility shall be subject to a facility fee for treatment, storage, or disposal, if that activity took place before July 1, 1986, and if the fee for the activity was not paid prior to January 1, 1994.

(f) Notwithstanding any other provision of this section, a person who ceased actual treatment, storage, or disposal of hazardous waste, whether generated onsite or received from offsite, before July 1, 1986, and who paid facility fees for any reporting period after that date pursuant to a decision of the Board of Equalization and who filed a claim for refund of those fees on or before January 1, 1994, shall be entitled to a refund of those amounts.

(g) Facility operators who treated, stored, or disposed of hazardous waste on or after July 1, 1986, shall be subject to the provisions of this section which were in effect prior to January 1, 1994, as to payments which their operators made prior to January 1, 1994. The operators shall be subject to subdivision (d) as to any other liability for the facility fee.

(h) A treatment facility is not subject to the facility fee established pursuant to this section, if the facility engages in treatment exclusively to accomplish a removal or remedial action or a corrective action in accordance with an order issued by the Environmental Protection Agency pursuant to the federal act or in accordance with an order issued by the department pursuant to Section 25187, if the facility was put in operation solely for purposes of complying with that order. The department shall instead assess a fee for that facility for the actual time spent by the department for the inspection and oversight of that facility. The department shall base the fee on the department's work standards and shall assess the fee on an hourly basis.

(i) Notwithstanding subdivision (a), a facility operating pursuant to a standardized permit or a grant of interim status, as specified in Section 25201.6, is exempt from the annual facility fee imposed by this section for a period of time equal to the number of years that the facility lawfully operated prior to September 21, 1993, pursuant to a hazardous waste facilities permit or other grant of authorization and paid facility fees for the operation of the facility pursuant to this section.

SEC. 3. Section 25205.4 of the Health and Safety Code is amended to read:

25205.4. (a) The base rate for the facility fee imposed by Section 25205.2 for the 1991–92 fiscal year is the base rate for the 1991 reporting period, as established pursuant to this section as it read on June 30, 1991. Commencing with the 1992 reporting period, and for each reporting period thereafter, the board shall adjust the base rate annually to reflect increases or decreases in the cost of living measured by the Consumer Price Index issued by the United States Department of Labor or by a successor agency of the federal government.

(b) The determination of the facility fee pursuant to this section, including the redetermination of the base rate, is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Except as provided in subdivision (e), in computing the facility fees, all of the following shall apply:

(1) The fee to be paid by a ministorage facility shall equal 25 percent of the base facility rate.

(2) The fee to be paid by a small storage facility shall equal the base facility rate.

(3) The fee to be paid by a large storage facility shall equal twice the base facility rate.

(4) The fee to be paid by a minitreatment facility shall equal 50 percent of the base facility rate.

(5) The fee to be paid by a small treatment facility shall equal twice the base facility rate.

(6) The fee to be paid by a large treatment facility shall equal three times the base facility rate.

(7) The fee to be paid by a disposal facility until closure is approved shall equal 10 times the base facility rate.

(8) The fee to be paid by a facility with a postclosure permit shall be seven thousand five hundred dollars ($7,500) annually for a small facility, fifteen thousand dollars ($15,000) annually for a medium facility, and twenty-two thousand five hundred dollars ($22,500) for a large facility during the first five years of the postclosure period. The fee to be paid by a facility with a postclosure permit during the remaining years of the postclosure care period shall be four thousand dollars ($4,000) annually for a small facility, eight thousand dollars ($8,000) annually for a medium facility, and thirteen thousand five hundred dollars ($13,500) annually for a large facility.

(d) If a facility falls into more than one category listed in either subdivision (c) or (e), or any combination thereof, or multiple operations under a single hazardous waste facilities permit or grant of interim status fall into more than one category listed in either subdivision (c) or (e), or any combination thereof, the facility operator shall pay only the rate for the facility category which is the highest rate.

(e) Notwithstanding subdivision (c), the facility fee for a facility operating under a standardized permit shall be as follows:

(1) The fee to be paid for a facility operating pursuant to a series A standardized permit shall be fifteen thousand three hundred seventy-three dollars ($15,373).

(2) The fee to be paid for a facility operating pursuant to a series B standardized permit shall be seven thousand two hundred five dollars ($7,205).

(3) Except as specified in paragraph (4), the fee to be paid for a facility operating pursuant to a series C standardized permit shall be six thousand fifty-one dollars ($6,051).

(4) The fee for a facility operating pursuant to a series C standardized permit is three thousand twenty-five dollars ($3,025) if the facility meets all of the following conditions:

(A) The facility treats not more than 1,500 gallons of liquid hazardous waste and not more than 3,000 pounds of solid hazardous waste in any calendar month.

(B) The total facility storage capacity does not exceed 15,000 gallons of liquid hazardous waste and 30,000 pounds of solid hazardous waste.

(C) If the facility both treats and stores hazardous waste, the facility does not exceed the volume limitations specified in subparagraphs (A) and (B) for each individual activity.

(f) The fee imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

SEC. 4. Section 25205.7 of the Health and Safety Code, as amended by Chapter 65 of the Statutes of 1994, is amended to read:

25205.7. (a) The board shall assess a fee for any application for a new hazardous waste facilities permit, a permit for a hazardous waste

facility which would manage extremely hazardous waste, a variance, or a permit modification issued by the department pursuant to this chapter or the regulations adopted pursuant to this chapter. The fee shall be nonrefundable, even if the application is withdrawn or the permit, variance, or modification is denied. The department shall provide the board with any information which is necessary to assess fees pursuant to this section. The fee shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the Hazardous Waste Control Account. A person who submits a single application for a facility that falls within more than one fee category shall pay only the higher fee.

(b) (1) The amounts stated in this section shall be base rates for the 1989–90 fiscal year for all facilities, other than those operating pursuant to a standardized permit, as specified in Section 25201.6. For all facilities operating pursuant to a standardized permit, the amounts stated in this section shall be the base rates for the 1993–94 fiscal year. Thereafter the fees shall be adjusted annually to reflect increases or decreases in the cost of living, as measured by the Consumer Price Index for the United States, as reported by the Department of Labor or a successor agency of the United States government.

(2) The board shall pay a refund of the portion of the fee that was paid for the 1993–94 fiscal year, in excess of the amounts specified in this section, to an owner or operator of a facility operating pursuant to a standardized permit pursuant to Section 25201.6 who paid fees in excess of the amounts specified in this section for that fiscal year.

(3) The fee shall be assessed upon application to the department. For a facility operating pursuant to interim status, the submittal of the application shall be the submittal of the Part B application in accordance with regulations adopted by the department. A person who submits an application for renewal of any existing permit shall pay an amount equal to the fee that would have been assessed had the person requested the same changes in a modification application, but not less than one-half the fee required for a new permit.

(c) A person submitting a hazardous waste facilities permit application for a land disposal facility shall pay eighty-three thousand dollars ($83,000) for a small facility, one hundred seventy-seven thousand dollars ($177,000) for a medium facility, and three hundred four thousand dollars ($304,000) for a large facility.

(d) A person submitting a hazardous waste facilities permit application for any incinerator shall pay fifty thousand dollars ($50,000) for a small facility, one hundred six thousand dollars ($106,000) for a medium facility, and one hundred eighty-two thousand dollars ($182,000) for a large facility.

(e) (1) Except as provided in paragraphs (2) and (3), a person submitting a hazardous waste facility permit application for a storage facility, a treatment facility, or a storage and treatment facility shall pay seventeen thousand dollars ($17,000) for a small facility,

thirty-one thousand dollars ($31,000) for a medium facility, and sixty thousand dollars ($60,000) for a large facility.

(2) A person submitting an application for a standardized permit for a storage facility, a treatment facility, or a storage and treatment facility, as specified in Section 25201.6, shall pay thirty thousand fifty-one dollars ($30,051) for a series A standardized permit, eighteen thousand seven hundred sixty-two dollars ($18,762) for a series B standardized permit, and five thousand dollars ($5,000) for a series C standardized permit. The board shall assess these fees based upon the classifications specified in subdivision (a) of Section 25201.6.

(3) In addition to the fees specified in paragraph (2), the board shall assess a fee equal to the department's costs in reviewing and overseeing any corrective action program described in the application for a standardized permit pursuant to subparagraph (C) of paragraph (2) of subdivision (c) of Section 25201.6, and in reviewing and overseeing any corrective action work undertaken at the facility pursuant to that corrective action program.

(f) A person submitting a hazardous waste facilities permit application for a transportable treatment unit shall pay thirteen thousand dollars ($13,000) for a small unit, thirty thousand dollars ($30,000) for a medium unit, and sixty thousand dollars ($60,000) for a large unit.

(g) (1) (A) A person submitting a request for a variance shall pay three thousand dollars ($3,000) for a variance from any hazardous waste storage requirements imposed by this chapter, three hundred dollars ($300) for a variance issued pursuant to Section 25179.8, three hundred dollars ($300) for a variance to allow the use of a test method or analytical method which is an alternative to the methods prescribed by regulation for use in classifying a waste, eight hundred dollars ($800) for a variance from the requirements for hazardous waste haulers imposed by this chapter.

(B) A person submitting a request for a variance not listed in subparagraph (A) shall pay eight thousand dollars ($8,000), unless the applicant is a small business and the department determines in its discretion that payment of this fee would cause financial or other unreasonable hardship to the applicant. If that finding is made, the department may assess the applicant up to 50 percent of the standard fee. For the purposes of this subparagraph, "small business" means a business which is independently owned and operated, has 25 employees or less, and has a gross annual income which does not exceed two million dollars ($2,000,000).

(C) If the variance application requests a variance from more than one specific statute or regulation, a separate fee may be assessed for each statute or regulation from which the variance is requested.

(2) If the variance contains no significant changes from a variance previously issued to the same owner or operator, the fee shall be 25 percent of the amount otherwise provided for by this section. A change is a significant change if, had it been made to a permit, it

would have been a class 2 or class 3 modification, as specified in subdivision (h).

(3) Any variance granted pursuant to Article 3 (commencing with Section 66260.21) of Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations is not subject to a fee under this section.

(h) (1) A person who applies for one or more class 1 permit modifications shall pay a fee of five hundred dollars ($500) for each unit directly impacted by the modification, up to a maximum of one thousand five hundred dollars ($1,500) for each application.

(2) A person who applies for one or more class 2 permit modifications shall pay a fee equal to 20 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 40 percent for each application, except that each person who applies for one or more class 2 permit modifications for a land disposal facility or an incinerator shall pay a fee equal to 15 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 30 percent for each application.

(3) A person who applies for one or more class 3 permit modifications shall pay a fee equal to 40 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 80 percent for each application, except that a person who applies for one or more class 3 permit modifications for a land disposal facility shall pay a fee equal to 30 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 60 percent for each modification.

(4) No facility which is exempted from fees imposed by this article pursuant to subdivision (e) of Section 25205.3, nor any operator who is subject to paragraph (2) or (3) of subdivision (d) of Section 25205.2, shall be subject to any fee pursuant to this section for a permit modification resulting from a revision of the facility's or operator's closure plan.

(1) Permits for postclosure shall be required for hazardous waste facilities if hazardous wastes remain after closure which will not be subject to the requirements of any other hazardous waste facilities permit issued by the department at the time of postclosure permit approval.

(2) A person submitting a hazardous waste facilities permit application for a postclosure permit shall pay a fee of eight thousand dollars ($8,000) for a small facility, eighteen thousand dollars ($18,000) for a medium facility, and thirty thousand dollars ($30,000) for a large facility.

(3) For purposes of this subdivision and paragraph (8) of subdivision (c) of Section 25205.4, and notwithstanding subdivision (j), any facility or unit is "small" if 0.5 tons (1,000 pounds) or less of hazardous waste remain after closure, "medium" if more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste

remain after closure, and "large" if 1,000 or more tons of hazardous waste remain after closure.

(j) For purposes of this section, and notwithstanding Section 25205.1, any facility or unit is "small" if it manages 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the state's current fiscal year, "medium" if it manages more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the state's current fiscal year, and "large" if it manages 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year.

(k) The fees assessed pursuant to this section do not apply to any permit or variance to operate a research, development, and demonstration facility, if the duration of the permit or variance is not longer than one year, unless the permit or variance is renewed pursuant to the regulations adopted by the department. For purposes of this section, a "research, development, and demonstration facility" is a facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which regulations prescribing permit standards have not been adopted.

(*l*) The fees assessed pursuant to this section do not apply to any of the following:

(1) Any variance issued to a public agency to transport wastes for purposes of operating a household hazardous waste collection facility, or to transport waste from a household hazardous waste collection facility, which receives household hazardous waste or hazardous waste from conditionally exempted small quantity generators pursuant to Article 10.8 (commencing with Section 25218).

(2) A permanent household hazardous waste collection facility.

(3) Any variance issued to a public agency to conduct a collection program for agricultural wastes.

(m) Except as provided in paragraph (3) of subdivision (e), the department shall not access any fees for the department's costs in reviewing and overseeing a corrective action taken in conjunction with a hazardous waste facility permit application.

(n) The fees assessed pursuant to subdivision (h) do not apply to any government agency for hazardous wastes which result when the government agency, or its contractor, investigates, removes, or remedies a release of hazardous waste caused by another person.

(o) Any person producing or transporting extremely hazardous waste shall pay a fee to the department of two hundred dollars ($200) per calendar year, in addition to any other fee imposed by this section. The fee shall be collected by the department annually.

SEC. 5. Section 25205.12 of the Health and Safety Code is amended to read:

25205.12. (a) The owner of a hazardous waste facility authorized by the department to operate pursuant to a permit-by-rule, authorized under a grant of conditional authorization pursuant to

Section 25200.3, exempted pursuant to subdivision (a) or (c) of Section 25201.5, or exempted pursuant to Section 25144.6 is exempt from the facility fee specified in Section 25205.2 for any activities authorized by the permit-by-rule, under a grant of conditional authorization pursuant to Section 25200.3, exempted pursuant to subdivision (a) or (c) of Section 25201.5, or exempted pursuant to Section 25144.6 at that facility for any year or reporting period during which the facility is operating.

(b) The retroactive portion of the facility fee exemption provided by subdivision (a) does not apply to any facility which was authorized by the department to operate on or before June 1, 1991, for any fees paid or billed prior to September 1, 1992.

(c) The operator of a hazardous waste facility authorized by the department to clean and recycle excavated underground storage tanks is exempt from the facility fee specified in Section 25205.2 with regard to these activities conducted before January 1, 1994, and these activities conducted after that date, until the effective date of a regulation adopted by the department governing the statewide requirements for the issuance of a permit for tank cleaning and recycling facilities.

(d) The operator of a hazardous waste facility operating pursuant to a standardized permit or a grant of interim status, as specified in Section 25201.6, is exempt from the facility fee specified in Sections 25205.2 and 25205.4 for any year or reporting period prior to January 1, 1993, during which the facility operated, if the hazardous waste treatment or storage activity was conducted prior to January 1, 1993, and the owner or operator is in compliance with the notification and application requirements of Section 25201.6, as amended in the 1993–94 Regular Session of the Legislature, or as amended thereafter, and either of the following circumstances apply:

(1) The owner or operator was not authorized by the department before July 1, 1993, to conduct the eligible treatment or storage activity.

(2) The owner or operator did not pay a hazardous waste facility fee, as specified in Section 25205.2, for that year or reporting period prior to July 1, 1993, for the facility that is the subject of the standardized permit.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 549

An act to add Section 6247 to the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 6247 is added to the Penal Code, to read:

6247. (a) Notwithstanding any other provision of this chapter, the County of Orange may establish, in consultation with the Board of Corrections, a regional public inebriate reception center in the County of Orange as a one-year pilot project to provide short-term shelter with a minimum capacity of 20 sleeping spaces, surveillance, assessment, and referral services for men and women.

(b) The County of Orange may operate and administer the pilot program specified in subdivision (a) and report to the board within nine months after commencement of operation of the regional public inebriate reception center as to whether its operation has resulted in cost savings by diversion of persons from the criminal justice system, and in other public benefits.

SEC. 2. The Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution due to the following unique circumstances:

The County of Orange is under a court order to alleviate jail overcrowding. There is a great need for, and lack of, a regional public inebriate reception center to serve the area in and surrounding the County of Orange by diverting public inebriates from the criminal justice system.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The conditions in and surrounding the County of Orange and the lack of civil diversion centers for public inebriates threaten the ability of local police departments to protect the health and safety of the citizens of the county.

CHAPTER 550

An act to amend Section 7031 of the Business and Professions Code, relating to contractors.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 7031 of the Business and Professions Code is amended to read:

7031. (a) Except as provided in subdivision (d), no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract for which a license is required by this chapter without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person, except that this prohibition shall not apply to contractors who are each individually licensed under this chapter but who fail to comply with Section 7029.

(b) A security interest taken to secure any payment for the performance of any act or contract for which a license is required by this chapter is unenforceable if the person performing the act or contract was not a duly licensed contractor at all times during the performance of the act or contract.

(c) If licensure or proper licensure is controverted, then proof of licensure pursuant to this section shall be made by production of a verified certificate of licensure from the Contractors' State License Board which establishes that the individual or entity bringing the action was duly licensed in the proper classification of contractors at all times during the performance of any act or contract covered by the action. Nothing herein shall require any person or entity controverting licensure or proper licensure to produce a verified certificate. When licensure or proper licensure is controverted, the burden of proof to establish licensure or proper licensure shall be on the licensee.

(d) The judicial doctrine of substantial compliance shall not apply under this section where the person who engaged in the business or acted in the capacity of a contractor has never been a duly licensed contractor in this state. However, the court may determine that there has been substantial compliance with licensure requirements under this section if it is shown at an evidentiary hearing that the person who engaged in the business or acted in the capacity of a contractor (1) had been duly licensed as a contractor in this state prior to the performance of the act or contract, (2) acted reasonably and in good faith to maintain proper licensure, and (3) did not know

or reasonably should not have known that he or she was not duly licensed. Subdivision (b) of Section 143 does not apply to contractors subject to this subdivision.

(e) The exceptions to the prohibition against the application of the judicial doctrine of substantial compliance found in subdivision (d) shall apply to all contracts entered into on or after January 1, 1992, and to all actions or arbitrations arising therefrom, except that the amendments to subdivisions (d) and (e) enacted during the 1994 portion of the 1993–94 Regular Session of the Legislature shall not apply to either of the following:

(1) Any legal action or arbitration commenced prior to January 1, 1995, regardless of the date on which the parties entered into the contract.

(2) Any legal action or arbitration commenced on or after January 1, 1995, if the legal action or arbitration was commenced prior to January 1, 1995, and was subsequently dismissed.

CHAPTER 551

An act to add Section 1727.7 to the Health and Safety Code, relating to home health services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 1727.7 is added to the Health and Safety Code, to read:

1727.7. (a) The Legislature finds and declares the following:

(1) Thousands of patients receive home health care each year, thus preventing, postponing, and limiting the need for unnecessary institutionalization.

(2) The adoption of emergency home health agency licensing regulations is necessary in order to conform existing home health agency licensing regulations to state law and the current scope and practice of home health care.

(3) The adoption of emergency home health agency regulations is necessary due to the increased provider and consumer demands for home care services and advances in health care technology.

(4) The adoption of emergency home health agency regulations is necessary due to the emerging influences of health care reform and changing expectations of managed care programs and insurance providers.

(b) The director shall adopt revised home health agency licensure regulations. These revised regulations shall be adopted on an emergency basis. Until January 1, 1996, the adoption of any

emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement this section shall be deemed to be an emergency by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare.

(c) It is the intent of the Legislature that the adoption of home health agency licensure regulations pursuant to this chapter shall in no way prohibit interested parties from participating in review of the revised regulations. It is also the intent of the Legislature that the adoption of the revised regulations shall in no way narrow the existing scope of practice of registered nurses or licensed vocational nurses or lessen the quality of nurse supervision or care in the home health care setting.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the necessary services provided to patients of home health agencies are not interrupted, it is necessary that this act take immediate effect.

CHAPTER 552

An act to add and repeal Chapter 9.5 (commencing with Section 66750) of Part 40 of the Education Code, relating to postsecondary education.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Public postsecondary educational institutions would become more learner-centered than institution-centered by providing an opportunity for students of the California Community Colleges, the California State University, and the University of California to cross-enroll without formal admission or payment of additional fees in a maximum of one course per academic term at a campus of either of the other systems. This policy would enable campuses of those institutions to become more accessible, become more responsive to student needs, to make cross-enrollment procedures simpler and less time consuming, and to begin to develop a new model of a college or university for the 21st century.

(b) Facilitating cross-enrollment of students responds to subdivision (c) of Section 66738 of the Education Code, which states,

in part, that the "governing board of each segment shall expand existing practices related to concurrent enrollment, in which community college students are provided the opportunity to take courses at University of California and California State University campuses, as space is available; and to expand opportunities for potential transfer students to participate in activities that familiarize them with the university campus."

(c) California is struggling to provide adequate educational opportunities for California residents while reeling from the impact of diminished budgets and calls for reduced costs. Expediting greater cross-enrollment of students of the California Community Colleges, the California State University, and the University of California would respond to legislative and postsecondary institutional interest in sharing resources, increasing ease of access, and encouraging intersegmental cooperation.

(d) Using technological advances will free students who wish to cross-enroll from the following steps:

(1) Completion of an admission application.

(2) Payment of an admission application fee.

(3) Submission of transcripts from the home institution to the host campus.

(e) The Legislature remains interested in the segments of public postsecondary education developing, in consultation with independent institutions, intrasegmental, intersegmental, and regional specialization agreements for specified areas of education. Public segments are encouraged to develop new programs and to project and identify societal and educational needs as well as innovative educational programs. This act to facilitate cross-enrollment represents but one program designed to respond to these goals.

(f) Enactment of this act is a major step toward achieving a seamless transition of students between the higher education systems. "Step-to-college" programs already exist to encourage high school students to enroll concurrently in courses offered at local colleges and universities. This proposal would afford a similar opportunity to community college students.

(g) Increased access to the California Community Colleges, the California State University, and the University of California by an uncomplicated cross-enrollment option responds directly to Master Plan Review recommendations to "develop new programs of outreach, recruitment, and cooperation" between the segments.

(h) California Community College students who enroll concurrently would be lower division students, most likely wishing to sample university courses. The experience would provide an opportunity to bolster the confidence of California Community College students by their successful performance in university level courses, thereby encouraging them to continue their education beyond the associate degree level. Accordingly, cross-enrollment has the potential to increase transfers from the California Community

Colleges to the California State University and the University of California, including the transfer of students from underrepresented groups.

(i) Enactment of this act will also provide California State University and University of California students with the opportunity to take lower division courses at the California Community Colleges without additional cost. Students may find it necessary to look to the California Community Colleges for courses not offered by the California State University and the University of California campuses or not available during a given term.

(j) Since only qualified students would be permitted to enroll at a campus of the other system on a space available basis and since students would no longer require admission and legislatively mandated matriculation services, additional workload from cross-enrollment at campuses of the California Community Colleges, the California State University, and the University of California should be minimized.

SEC. 2. Chapter 9.5 (commencing with Section 66750) is added to Part 40 of the Education Code, to read:

CHAPTER 9.5. CROSS-ENROLLMENT

66750. For purposes of this chapter, the following definitions apply:

(a) "Home campus" means the campus at which the student is matriculated.

(b) "Host campus" means the campus to which the student seeks access.

66751. Any student enrolled in any campus of the California Community Colleges, the California State University, or the University of California who meets the requirements of Section 66752 may enroll without formal admission and, except as provided in Section 66753, payment of additional fees, in a maximum of one course per academic term at a campus of either of the other systems on a space available basis at the discretion of the appropriate campus authorities on both campuses. A student enrolled in a course pursuant to this chapter shall be provided access to necessary instructional support services at the host campus in the same manner as students regularly enrolled in the course.

66752. A student is qualified to participate in the program established by this chapter if he or she is enrolled in any campus of the California Community Colleges, the California State University, or the University of California and meets the following requirements:

(a) The student has completed at least one term at the home campus as a matriculated student and is taking at least six units at the home campus during the current term.

(b) The student has attained a grade point average of 2.0 (grade of C) for work completed.

(c) The student has paid appropriate tuition or fees, or both, required by the home campus for the academic term in which the student seeks to cross-enroll.

(d) The student has the appropriate academic preparation, as determined by the host campus, consistent with the standard applied to currently enrolled students, to enroll in the course in which the student seeks to enroll.

66752.5. Courses that are not state-supported, including extension and summer session courses, are not subject to this chapter.

66753. (a) The Chancellor of the California Community Colleges, the Chancellor of the California State University, and the President of the University of California shall establish procedures so that a student meeting the requirements of Section 66752 may be certified by the home campus as to eligibility, residence, fee, financial aid, and health status.

The host campus may require the applicant to submit additional information as needed. The host campus may charge participating students an administration fee, not to exceed ten dollars ($10) per academic term.

(b) A student enrolled pursuant to this chapter shall be exempt from participation in the matriculation services described in Article 1 (commencing with Section 78210) of Chapter 2 of Part 48.

66753.5. The enrollment of a student at a host campus pursuant to this chapter shall not be counted in the calculation of headcount or full-time equivalent student enrollment at either the home campus or the host campus.

66754. This chapter shall become operative commencing with the fall 1995 term.

66755. (a) The California Community Colleges, the California State University, and the University of California shall evaluate the impact of the program established by this chapter and shall report to the California Postsecondary Education Commission on or before June 30, 1998, on student use, revenue implications, and other issues that may be identified to judge satisfactorily the program's efficiency and determine whether it should be established permanently.

(b) The California Postsecondary Education Commission shall prepare a report based on the information from the segments and, notwithstanding Section 7550.5 of the Government Code, shall present the report, with recommendations, to the Governor and the Legislature on or before December 1, 1998.

66756. This chapter shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

CHAPTER 553

An act to amend Sections 3822, 25402.9, 25415, 25416, 25443, 25449.3, 25449.4, 25647, 25648.4, 25682, 25683, 25687, 25692, and 25942 of, to add Sections 3805.5, 3810, and 25449.2 to, to add Chapter 7.3 (commencing with Section 25630) to Division 15 of, and to repeal Section 25648.3 of, the Public Resources Code, relating to energy resources.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 3805.5 is added to the Public Resources Code, to read:

3805.5. "Commission" means the State Energy Resources Conservation and Development Commission.

SEC. 2. Section 3810 is added to the Public Resources Code, to read:

3810. (a) (1) "Award repayment or program reimbursement agreement," including a "royalty agreement," as specified in subdivision (b), means a method used at the discretion of the commission to determine and establish the terms of replenishment of program funds, including, at a minimum, repayment of the award to provide for further awards under this chapter. The award repayment or program reimbursement agreement may provide that payments be made to the commission when the award recipient, affiliate of the award recipient, or third party receives, through any kind of transaction, an economic benefit from the project, invention, or product developed, made possible, or derived, in whole or in part, as a result of the award.

(2) An award repayment or program reimbursement agreement shall specify the method to be used by the commission to determine and establish the terms of repayment and reimbursement of the award.

(3) The commission may require due diligence of the award recipient and may take any action that is necessary to bring the project, invention, or product to market.

(4) Subject to the confidentiality requirements of Section 2505 of Title 20 of the California Code of Regulations, the commission may require access to financial, sales, and production information, and to other agreements involving transactions of the award recipient, affiliates of the award recipient, and third parties, as necessary, to ascertain the royalties or other payments due the commission.

(b) A "royalty agreement" is an award repayment or program reimbursement agreement and is subject to all of the following conditions:

(1) The royalty rate shall be determined by the commission and

shall not exceed 5 percent of the gross revenue derived from the project, invention, or product.

(2) The royalty agreement shall specify the method to be used by the commission to determine and establish the terms of payment of the royalty rate.

(3) The commission shall determine the duration of the royalty agreement and may negotiate a collection schedule.

(4) The commission, for separate consideration, may negotiate and receive payments to provide for an early termination of the royalty agreement.

(c) (1) The commission may require that the intellectual property developed, made possible, or derived, in whole or in part, as a result of the award repayment or program reimbursement agreement, revert to the state upon a default in the terms of the award repayment or program reimbursement agreement or royalty agreement.

(2) The commission may require advance notice of any transaction involving intellectual property rights.

SEC. 3. Section 3822 of the Public Resources Code is amended to read:

3822. (a) Thirty percent of the revenues received and deposited in the Geothermal Resources Development Account shall be available for expenditure by the commission as grants or loans to local jurisdictions or private entities without regard to fiscal years. These revenues shall be held by the commission in the Local Government Geothermal Resources Revolving Subaccount, which is hereby created in the Geothermal Resources Development Account. Loan repayments shall be deposited in the subaccount and shall be used for making additional grants and loans pursuant to Section 3823.

(b) No local jurisdiction shall be eligible to apply for a grant or loan pursuant to this section unless its governing body approves the application by resolution.

(c) Each recipient of a grant or loan made pursuant to this section shall establish, for the deposit of the revenues, an account or fund that is separate from the other accounts and funds of the recipient, and may expend the revenues only for the purposes specified in this chapter.

(d) The commission shall make grants and loans pursuant to this section irrespective of whether a local jurisdiction is a county of origin.

(e) Any of the revenues that are not disbursed as grants or loans pursuant to this section during the fiscal year received shall be retained in the subaccount and may be disbursed as grants or loans pursuant to this section in succeeding fiscal years.

(f) (1) Any loan made under this section shall:

(A) Not exceed 80 percent of the local jurisdiction's costs.

(B) Be repaid together with interest within 20 years from receipt of the loan funds.

(2) Notwithstanding any other provision of law, the commission

shall, unless it determines that the purposes of this chapter would be better served by establishing an alternative interest rate schedule, periodically set interest rates on the loans based on surveys of existing financial markets and at rates not lower than the Pooled Money Investment Account.

(g) Any loan or grant made to a private entity under this section shall (1) be matched with at least an equal investment by the recipient, (2) provide tangible benefits, as determined by the commission, to a local jurisdiction, and (3) be approved by the city, county, or Indian reservation within which the project is to be located.

(h) The commission may require an award repayment or program reimbursement agreement of any recipient of a grant or loan made pursuant to this section.

SEC. 4. Section 25402.9 of the Public Resources Code is amended to read:

25402.9. (a) On or before July 1, 1996, the commission shall develop, adopt, and publish an informational booklet to educate and inform homeowners, rental property owners, renters, sellers, brokers, and the general public about the statewide home energy rating program adopted pursuant to Section 25942.

(b) In the development of the booklet, the commission shall consult with representatives of the Department of Real Estate, the Department of Housing and Community Development, the Public Utilities Commission, investor-owned and municipal utilities, cities and counties, real estate licensees, home builders, mortgage lenders, home appraisers and inspectors, home energy rating organizations, contractors who provide home energy services, consumer groups, and environmental groups.

(c) The commission shall charge a fee for the informational booklet to recover its costs under subdivision (a).

SEC. 5. Section 25415 of the Public Resources Code is amended to read:

25415. (a) Each eligible institution to which an allocation has been made under this chapter shall repay the principal amount of the allocation, plus interest, in not more than 22 equal semiannual payments, as determined by the commission. The first semiannual payment shall be made on or before December 22 of the fiscal year following the year in which the project is completed.

(b) Notwithstanding any other provision of law, the commission shall, unless it determines that the purposes of this chapter would be better served by establishing an alternative interest rate schedule, periodically set interest rates on the loans based on surveys of existing financial markets and at rates not lower than the Pooled Money Investment Account.

(c) The governing body of each eligible institution shall annually budget an amount at least sufficient to make the semiannual payments required in this section. The amount shall not be raised by the levy of additional taxes but shall instead be obtained by a savings

in energy costs.

SEC. 6. Section 25416 of the Public Resources Code is amended to read:

25416. (a) The State Energy Conservation Assistance Account is hereby created in the General Fund. Notwithstanding Section 13340 of the Government Code, the account is continuously appropriated to the commission without regard to fiscal year.

(b) The money in the account shall consist of all money authorized or required to be deposited in the account by the Legislature and all money received by the commission pursuant to Sections 25414 and 25415.

(c) The money in the account shall be disbursed by the Controller for the purposes of this chapter as authorized by the commission.

(d) The commission may contract and provide grants for services to be performed for eligible institutions. Services may include, but are not limited to, feasibility analysis, project design, field assistance, and operation and training. The amount expended for those services shall not exceed 10 percent of the annual appropriation from the account.

(e) The commission may make grants to demonstrate energy efficiency technologies at appropriate locations throughout the state. The amount expended for grants shall not exceed 5 percent of the annual appropriation from the account.

(f) The commission may charge a fee for the services provided under subdivision (d), provided that the funds used for the payment of those services shall have been made available to the eligible institution as a result of the realization of savings in energy costs. Those payments shall be deposited in the account. If anticipated savings do not result from the project, the repayment of fees shall be forgiven.

SEC. 7. Section 25443 of the Public Resources Code is amended to read:

25443. (a) Principal and interest payments on loans under this article shall be returned to the commission and shall be used to make additional loans to local jurisdictions pursuant to Section 25442 or to provide financial assistance to local jurisdictions pursuant to Section 25441.

(b) Notwithstanding any other provision of law, the commission shall, unless it determines that the purposes of this chapter would be better served by establishing an alternative interest rate schedule, periodically set interest rates on the loans based on surveys of existing financial markets and at rates not lower than the Pooled Money Investment Account.

SEC. 8. Section 25449.2 is added to the Public Resources Code, to read:

25449.2. Not later than three years after the imposition of any fees pursuant to this chapter, the commission shall report to the Legislature in the biennial energy conservation report required by Section 25401.1, on the effect of those fees on alternative public and

private financing for public sector programs.

SEC. 9. Section 25449.3 of the Public Resources Code is amended to read:

25449.3. (a) The Local Jurisdiction Energy Assistance Account is hereby created in the General Fund. All money appropriated for purposes of this chapter and all money received from local jurisdictions from loan repayments shall be deposited in the account and disbursed by the Controller as authorized by the commission.

(b) The commission may charge a fee for the services provided under this chapter, provided that the funds used for the payment of those services shall have been made available to the local jurisdiction as a result of the realization of savings in energy costs. Those payments shall be deposited in the account. If anticipated savings do not result from the project, the repayment of fees shall be forgiven.

SEC. 10. Section 25449.4 of the Public Resources Code is amended to read:

25449.4. This chapter shall remain in effect until January 1, 2002, and as of that date is repealed; provided that all loans outstanding on that date shall continue to be repaid in accordance with a schedule established by the commission pursuant to Section 25442.7, until paid in full irrespective of that repeal. All unexpended funds in the Local Jurisdiction Energy Assistance Account on January 1, 2002, and thereafter, shall revert to the General Fund.

SEC. 11. Chapter 7.3 (commencing with Section 25630) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 7.3. SMALL BUSINESS ENERGY TECHNOLOGY LOAN PROGRAM

25630. (a) The commission shall establish a small business energy assistance low-interest revolving loan program to fund the purchase of equipment for alternative technology energy projects for California's small businesses.

(b) The loan program may use royalty agreements, as provided in Chapter 7.4 (commencing with Section 25645), to replenish program funds beyond the amount of loan repayment. Loan repayments, interest, and royalties shall be deposited in the Energy Technologies Research, Development, and Demonstration Account. The interest rate shall be determined as provided in subdivision (g) of Section 25647.

SEC. 12. Section 25647 of the Public Resources Code is amended to read:

25647. For purposes of this chapter:

(a) "Alternative source of energy" includes, but is not limited to, geothermal power, hydroelectric power equal to or less than 5 megawatts, photovoltaics, wind, biomass, cogeneration, solar thermal energy, fuel cells, alternative fuels, electric vehicles, low-emission vehicles, advanced energy storage, and energy efficiency and conservation measures.

(b) (1)"Award repayment or program reimbursement agreement," including a "royalty agreement," as specified in paragraph (1) of subdivision (c), means a method used at the discretion of the commission to determine and establish the terms of replenishment of program funds, including, at a minimum, repayment of the award to provide for further awards under this chapter. The award repayment or program reimbursement agreement may provide that payments be made to the commission when the award recipient, affiliate of the award recipient, or third party receives, through any kind of transaction, an economic benefit from the project, invention, or product developed, made possible, or derived, in whole or in part, as a result of the award.

(2) An award repayment or program reimbursement agreement shall specify the method to be used by the commission to determine and establish the terms of repayment and reimbursement of the award.

(3) The commission may require due diligence of the award recipient and may take any action that is necessary to bring the project, invention, or product to market.

(4) Subject to the confidentiality requirements of Section 2505 of Title 20 of the California Code of Regulations, the commission may require access to financial, sales, and production information, and to other agreements involving transactions of the award recipient, affiliates of the award recipient, and third parties, as necessary, to ascertain the royalties or other payments due the commission.

(c) (1) A "royalty agreement" is an award repayment or program reimbursement agreement and is subject to all of the following conditions:

(A) The royalty rate shall be determined by the commission and shall not exceed 5 percent of the gross revenue derived from the project, invention, or product.

(B) The royalty agreement shall specify the method to be used by the commission to determine and establish the terms of payment of the royalty rate.

(C) The commission shall determine the duration of the royalty agreement and may negotiate a collection schedule.

(D) The commission, for separate consideration, may negotiate and receive payments to provide for an early termination of the royalty agreement.

(2) (A) The commission may require that the intellectual property developed, made possible, or derived, in whole or in part, as a result of the award repayment or program reimbursement agreement, revert to the state upon a default in the terms of the award repayment or program reimbursement agreement or royalty agreement.

(B) The commission may require advance notice of any transaction involving intellectual property rights.

(d) "Loan" means the contractual financing of a qualifying project under a program in which all of the following occur:

(1) The recipient of the loan repays the loan amount, plus accrued interest.

(2) The loan applicant is required to demonstrate the financial capability to repay the loan regardless of the commercial success of the project.

(3) The loan is required to be secured by appropriate collateral regardless of the commercial success of the project.

(4) Loans are generally provided to those projects using energy technologies that are relatively close to full commercialization, include demonstration or commercialization of the technologies, and have a high probability of generating revenue or other economic benefit sufficient to repay the loan and the accrued interest within 10 years from the performance determination date of the contract. A royalty agreement may be used to replenish program funds beyond the amount of the loan repayment.

(e) "Research contract" means a contractual award made to a qualifying project under a program in which all of the following occur:

(1) The award includes an award repayment or program reimbursement agreement.

(2) The award repayment or program reimbursement agreement specifies the method to be used by the commission in determining and establishing the terms of repayment and reimbursement of the award.

(3) Research contracts are provided for those projects that have a moderate to low probability of generating revenue or other economic benefit within 15 years from the performance determination date of the contract.

(f) "Grant" means a grant award made to a small business certified by the Office of Small and Minority Business of the Department of General Services, or which meets the requirements of Part 121.601 of Title 13 of the Code of Federal Regulations, to cofund a qualifying project under a program in which all of the following occur:

(1) The award includes an award repayment or program reimbursement agreement.

(2) The award repayment or program reimbursement agreement specifies the method to be used by the commission in determining and establishing the terms of repayment and reimbursement.

(g) "Accrued interest" means the cumulative interest on the outstanding balance of a loan, research contract, or grant. The commission shall specify in the terms of the award the manner in which the commission will compute the interest. Notwithstanding any other provision of law, the commission shall, unless it determines that the purposes of this chapter would be better served by establishing an alternative interest rate schedule, periodically set interest rates on the loans, research contracts, and grants based on surveys of existing financial markets and at rates not lower than the Pooled Money Investment Account. Interest shall begin accruing

upon the date of first drawdown of funds.

(h) "Performance determination date" means the date at which the commission renders a written decision on the success of the project in meeting the goals and objectives established in the loan, research contract, or grant.

SEC. 13. Section 25648.3 of the Public Resources Code is repealed.

SEC. 14. Section 25648.4 of the Public Resources Code is amended to read:

25648.4. The commission shall apply this chapter to research, development, demonstration, and commercialization projects that are not subject to Chapter 6 (commencing with Section 3800) of Division 3 and Chapter 7.8 (commencing with Section 25680) of this division.

SEC. 15. Section 25682 of the Public Resources Code is amended to read:

25682. For purposes of this chapter:

(a) "Account" means the Energy Technologies Research, Development, and Demonstration Account.

(b) "Alternative sources of energy" includes, but is not limited to, geothermal, hydroelectric power equal to or less than 5 megawatts, photovoltaics, wind, biomass, cogeneration, solar thermal, fuel cells, and energy efficiency measures.

(c) (1) "Award repayment or program reimbursement agreement," including a "royalty agreement," as specified in paragraph (1) of subdivision (d), means a method used at the discretion of the commission to determine and establish the terms of replenishment of program funds, including, at a minimum, repayment of the award to provide for further awards under this chapter. The award repayment or program reimbursement agreement may provide that payments be made to the commission when the award recipient, affiliate of the award recipient, or third party receives, through any kind of transaction, an economic benefit from the project, invention, or product developed, made possible, or derived, in whole or in part, as a result of the award.

(2) An award repayment or program reimbursement agreement shall specify the method to be used by the commission to determine and establish the terms of repayment and reimbursement of the award.

(3) The commission may require due diligence of the award recipient and may take any action that is necessary to bring the project, invention, or product to market.

(4) Subject to the confidentiality requirements of Section 2505 of Title 20 of the California Code of Regulations, the commission may require access to financial, sales, and production information, and to other agreements involving transactions of the award recipient, affiliates of the award recipient, and third parties, as necessary, to ascertain the royalties or other payments due the commission.

(d) (1) A "royalty agreement" is an award repayment or

program reimbursement agreement and is subject to all of the following conditions:

(A) The royalty rate shall be determined by the commission and shall not exceed 5 percent of the gross revenue derived from the project, invention, or product.

(B) The royalty agreement shall specify the method to be used by the commission to determine and establish the terms of payment of the royalty rate.

(C) The commission shall determine the duration of the royalty agreement and may negotiate a collection schedule.

(D) The commission, for separate consideration, may negotiate and receive payments to provide for an early termination of the royalty agreement.

(2) (A) The commission may require that the intellectual property developed, made possible, or derived, in whole or in part, as a result of the award repayment or program reimbursement agreement, revert to the state upon a default in the terms of the award repayment or program reimbursement agreement or royalty agreement.

(B) The commission may require advance notice of any transaction involving intellectual property rights.

(e) "Loan" means the contractual financing of a qualifying project under the program, and in which the recipient of the loan repays the loan amount, plus accrued interest regardless of the commercial success of the project. Loans are generally to be provided to those projects that include energy technology systems that are relatively close to full commercialization, represent demonstrations of the technology, and have high probability of generating revenue or other economic benefit sufficient to repay the loan and the accrued interest within 10 years from the performance determination date of the contract. A royalty agreement may be used to replenish program funds beyond the amount of the loan repayment.

(f) (1) "Repayable research contract" means the contractual award made to a qualifying project under the program, and which is provided to those projects that are in the latter stages of technology development and have a moderate probability of generating revenue or other economic benefit within 15 years from the performance determination date of the contract.

(2) The repayable research contract shall include an award repayment or program reimbursement agreement.

(3) The repayable research contract shall specify the method to be used by the commission in determining and establishing the terms of repayment and reimbursement of the award.

(g) (1) "Primary research contract" means the contractual award made to a qualifying project under the program, and which is provided to those projects that are in the early stages of technology development and have a low probability of generating revenue or other economic benefit within 15 years from the performance

determination date of the contract.

(2) The primary research contract shall include an award repayment or program reimbursement agreement.

(3) The primary research contract shall specify the method to be used by the commission in determining and establishing the terms of repayment and reimbursement of the award.

(h) "Performance determination date" means the date at which the commission renders a written decision on the success of the project in meeting the goals and objectives established in the contract for the project.

SEC. 16. Section 25683 of the Public Resources Code is amended to read:

25683. (a) There is hereby created in the General Fund, to be administered by the commission, the Energy Technologies Research, Development, and Demonstration Account for the purpose of carrying out this chapter.

(b) The Controller shall deposit in the account all money appropriated to the account by the Legislature, plus accumulated interest on that money, and money from loan, research contract, and grant repayments and royalties, and loan, research contract, and grant interest repayments for use by the commission for financing energy research, demonstration, development, and commercialization projects funded under this chapter, Chapter 7.3 (commencing with Section 25630), and Chapter 7.4 (commencing with Section 25645). Funds shall be identified in accordance with the programmatic source of the funds.

SEC. 17. Section 25687 of the Public Resources Code is amended to read:

25687. Notwithstanding any other provision of law, the commission shall, unless it determines that the purposes of this chapter would be better served by establishing an alternative interest rate schedule, periodically set interest rates on the loans based on surveys of existing financial markets and at rates not lower than the Pooled Money Investment Account. Loans shall be repaid within 20 years from receipt of the funds, as determined by the commission.

SEC. 18. Section 25692 of the Public Resources Code is amended to read:

25692. (a) Notwithstanding any other provision of law, the commission shall deposit in the account any repayments, including equipment sales, interest, royalties, and loans, and contract funds appropriated to the commission for research, development, demonstration, or commercialization of energy technologies. However, if repayments from equipment sales or contract funds were generated from a loan, research contract, or grant account which is still in existence, those repayments shall return to that specific loan, research contract, or grant account.

(b) The account shall be a revolving account with funds annually appropriated by the Legislature to the commission for disbursement

over a three-year period. Additional funds, if necessary to carry out the purposes of this chapter, may be appropriated in the Budget Act.

SEC. 19. Section 25942 of the Public Resources Code is amended to read:

25942. (a) On or before July 1, 1995, the commission shall establish criteria for adopting a statewide home energy rating program for residential dwellings. The program criteria shall include, but are not limited to, all of the following elements:

(1) Consistent, accurate, and uniform ratings based on a single statewide rating scale.

(2) Reasonable estimates of potential utility bill savings, and reliable recommendations on cost-effective measures to improve energy efficiency.

(3) Training and certification procedures for home raters and quality assurance procedures to promote accurate ratings and to protect consumers.

(4) In coordination with home energy rating service organization data bases, procedures to establish a centralized, publicly accessible, data base that includes a uniform reporting system for information on residential dwellings, excluding proprietary information, needed to facilitate the program. There shall be no public access to information in the data base concerning specific dwellings without the owner's or occupant's permission.

(5) Labeling procedures that will meet the needs of home buyers, homeowners, renters, the real estate industry, and mortgage lenders with an interest in home energy ratings.

(b) The commission shall adopt the program pursuant to subdivision (a) in consultation with representatives of the Department of Real Estate, the Department of Housing and Community Development, the Public Utilities Commission, investor-owned and municipal utilities, cities and counties, real estate licensees, home builders, mortgage lenders, home appraisers and inspectors, home energy rating organizations, contractors who provide home energy services, consumer groups, and environmental groups.

(c) On and after January 1, 1996, no home energy rating services may be performed in this state unless the services have been certified, if such a certification program is available, by the commission to be in compliance with the program criteria specified in subdivision (a) and, in addition, are in conformity with any other applicable element of the program.

(d) On or before July 1, 1996, the commission shall consult with the agencies and organizations described in subdivision (b), to facilitate a public information program to inform homeowners, rental property owners, renters, sellers, and others of the existence of the statewide home energy rating program adopted by the commission.

(e) Beginning with the 1998 biennial energy conservation report required by Section 25401.1, the commission shall, as part of that

biennial report, report on the progress made to implement a statewide home energy rating program. The report shall include an evaluation of the energy savings attributable to the program, and a recommendation concerning which means and methods will be most efficient and cost-effective to induce home energy ratings for residential dwellings.

CHAPTER 554

An act to add Section 7149.4 to, and to add and repeal Section 7149.45 of, the Fish and Game Code, relating to fish, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1994. Filed with Secretary of State September 12, 1994.]

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

SECTION 1. Section 7149.4 is added to the Fish and Game Code, to read:

7149.4. (a) A person holding a valid sportfishing license issued pursuant to subdivision (a) of Section 7149 may obtain a second-rod sportfishing stamp from the department. A person who has a valid second-rod sportfishing license stamp attached to his or her valid sportfishing license issued pursuant to subdivision (a) of Section 7149 may fish in inland lakes and reservoirs with two rods in any sport fishery in which the regulations of the commission provide for the taking of fish by angling.

(b) The department shall issue a second-rod sportfishing license stamp upon payment of seven dollars and fifty cents ($7.50) during the 1995 calendar year and subsequent years, as adjusted under Section 713.

SEC. 2. Section 7149.45 is added to the Fish and Game Code, to read:

7149.45. (a) The department may enter into contracts for the purpose of producing and printing second-rod sportfishing license stamps and related informational materials without complying with Sections 10301, 10339, and 10340 of the Public Contracts Code.

(b) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1995, deletes or extends that date.

SEC. 3. Notwithstanding Section 7550.5 of the Government Code, on or before January 1, 1997, the Department of Fish and Game shall prepare and submit to the Fish and Game Commission and the appropriate policy committees of both houses of the Legislature a report that evaluates the second-rod stamp program described in Section 7149.4 of the Fish and Game Code and the

recommendations of the department on whether the program should be terminated, extended, or expanded.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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

In order for the provisions of this act that permit the use of two rods to be effective at the beginning of the 1995 sportfishing season, it is necessary that this act take effect immediately.

CHAPTER 555

An act to amend Sections 2600 and 2601 of the Penal Code, relating to prisoners.

[Approved by Governor September 12, 1994. Filed with Secretary of State September 13, 1994.]

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

SECTION 1. Section 2600 of the Penal Code is amended to read:

2600. A person sentenced to imprisonment in a state prison may during that period of confinement be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests.

Nothing in this section shall be construed to permit the involuntary administration of psychotropic medication unless the process specified in the permanent injunction, dated October 31, 1986, in the matter of Keyhea v. Rushen, 178 Cal. App. 3d 526, has been followed. The judicial hearing for the authorization for the involuntary administration of psychotropic medication provided for in Part III of the injunction shall be conducted by an administrative law judge. The hearing may, at the direction of the director, be conducted at the facility where the inmate is located.

Nothing in this section shall be construed to overturn the decision in Thor v. Superior Court, 5 Cal. 4th 725.

SEC. 2. Section 2601 of the Penal Code is amended to read:

2601. Subject only to the provisions of that section, each person

described in Section 2600 shall have the following civil rights:

(a) To inherit, own, sell, or convey real or personal property, including all written and artistic material produced or created by such person during the period of imprisonment. However, to the extent authorized in Section 2600, the Department of Corrections may restrict or prohibit sales or conveyances that are made for business purposes.

(b) To correspond, confidentially, with any member of the State Bar or holder of public office, provided that the prison authorities may open and inspect incoming mail to search for contraband.

(c) (1) To purchase, receive, and read any and all newspapers, periodicals, and books accepted for distribution by the United States Post Office. Pursuant to this section, prison authorities may exclude any of the following matter:

(A) Obscene publications or writings, and mail containing information concerning where, how, or from whom this matter may be obtained.

(B) Any matter of a character tending to incite murder, arson, riot, violent racism, or any other form of violence.

(C) Any matter concerning gambling or a lottery.

(2) Nothing in this section shall be construed as limiting the right of prison authorities to do the following:

(A) Open and inspect any and all packages received by an inmate.

(B) Establish reasonable restrictions as to the number of newspapers, magazines, and books that the inmate may have in his or her cell or elsewhere in the prison at one time.

(d) To have personal visits. However, the department may provide any restrictions that are necessary for the reasonable security of the institution.

(e) To initiate civil actions, subject to a three dollar ($3) filing fee to be collected by the Department of Corrections, and subject to Title 3a (commencing with Section 391) of the Code of Civil Procedure.

(f) To marry.

(g) To create a power of appointment.

(h) To make a will.

(i) To receive all benefits provided for in Sections 3370 and 3371 of the Labor Code and in Section 5069.

CHAPTER 556

An act to amend Section 2225 of the Civil Code, relating to profits of crime, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 12, 1994. Filed with Secretary of State September 13, 1994.]

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

SECTION 1. Section 2225 of the Civil Code is amended to read:

2225. (a) As used in this section:

(1) "Convicted felon" means any person convicted of a felony, or found not guilty by reason of insanity of a felony committed in California, either by a court or jury trial or by entry of a plea in court.

(2) "Felony" means a felony defined by any California or United States statute.

(3) "Representative of the felon" means any person or entity receiving proceeds by designation of that felon, or on behalf of that felon or in the stead of that felon, whether by the felon's designation or by operation of law.

(4) (A) "Beneficiary" means a person who, under applicable law, other than the provisions of this section, has or had a right to recover damages from the convicted felon for physical, mental, or emotional injury, or pecuniary loss proximately caused by the convicted felon as a result of the crime for which the felon was convicted.

(B) If a beneficiary described in subparagraph (A) has died, "beneficiary" also includes a person or estate entitled to recover damages pursuant to Chapter 4 (commencing with Section 377.10) of Title 3 of Part 2 of the Code of Civil Procedure.

(C) If a person has died and the death was proximately caused by the convicted felon as a result of the crime for which the felon was convicted, "beneficiary" also includes a person described in Section 377.60 of the Code of Civil Procedure and any beneficiary of a will of the decedent who had a right under that will to receive more than 25 percent of the value of the estate of the decedent.

(5) "Beneficiary's interest" means that portion of the proceeds or profits necessary to pay the following:

(A) In the case of a beneficiary described in subparagraph (A) or (B) of paragraph (4), those damages which, under applicable law, other than the provisions of this section, the beneficiary has or had a right to recover from the convicted felon for injuries proximately caused by the convicted felon as a result of the crime for which the felon was convicted.

(B) In the case of a beneficiary described in subparagraph (C) of paragraph (4), those damages which under all the circumstances of the case may be just.

(C) A beneficiary's interest shall be reduced by the following

amount:

(i) Money paid to the beneficiary from the Restitution Fund because of the crime for which the felon was convicted.

(ii) Money paid to the beneficiary by the convicted felon because of a requirement of restitution imposed by a court in connection with the crime for which the felon was convicted.

(iii) Money paid to the beneficiary because of a judgment against the convicted felon based upon the crime for which the felon was convicted.

(D) In the case of an unsatisfied existing judgment or order of restitution against the convicted felon and in favor of a beneficiary, any money paid to the beneficiary pursuant to this section shall be applied to reduce the amount of the unsatisfied judgment or order.

(6) "Materials" means books, magazine or newspaper articles, movies, films, videotapes, sound recordings, interviews or appearances on television and radio stations, and live presentations of any kind.

(7) "Story" means a depiction, portrayal, or reenactment of a felony and shall not be taken to mean a passing mention of the felony, as in a footnote or bibliography.

(8) "Sale" includes lease, license, or any other transfer or alienation taking place in California or elsewhere.

(9) "Proceeds" means all fees, royalties, real property, or other consideration of any and every kind or nature received by or owing to a felon or his or her representatives for the preparation for the purpose of sale of materials, for the sale of the rights to materials, or the sale or distribution by the convicted felon of materials whether earned, accrued, or paid before or after the conviction. It includes any interest, earnings, or accretions upon proceeds, and any property received in exchange for proceeds.

(10) "Profits" means all income from anything sold or transferred, including any right, the value of which is enhanced by the notoriety gained from the commission of a felony for which a convicted felon was convicted.

(b) (1) All proceeds from the preparation for the purpose of sale, the sale of the rights to, or the sale of materials that include or are based on the story of a felony for which a convicted felon was convicted, shall be subject to an involuntary trust for the benefit of the beneficiaries set forth in this section. That trust shall continue until five years after the time of payment of the proceeds to the felon or five years after the date of conviction, whichever is later. If an action is filed by a beneficiary to recover his or her interest in a trust within those time limitations, the trust character of the property shall continue until the conclusion of the action. At the end of the five-year trust period, any proceeds which remain in trust that have not been claimed by a beneficiary shall be transferred to the Controller, to be allocated to the Restitution Fund for the payment of claims pursuant to Section 13969 of the Government Code.

(2) All profits shall be subject to an involuntary trust for the

benefit of the beneficiaries set forth in this section. That trust shall continue until five years after the time of payment of the profits to the felon or five years after the date of conviction, whichever is later. If an action is filed by a beneficiary to recover his or her interest in a trust within those time limitations, the trust character of the property shall continue until the conclusion of the action. At the end of the five-year trust period, any profits which remain in trust that have not been claimed by a beneficiary shall be transferred to the Controller, to be allocated to the Restitution Fund for the payment of claims pursuant to Section 13969 of the Government Code.

(c) (1) Any beneficiary may bring an action against a convicted felon or representative of the felon to recover his or her interest in the trust established by this section.

(2) That action may be brought in the superior court of the county in which the beneficiary resides, or of the county in which the convicted felon resides, or of the county in which proceeds or profits are located.

(3) If the court determines that a beneficiary is entitled to proceeds or profits pursuant to this section, the court shall order the payment from proceeds or profits which have been received, and, if that is insufficient, from proceeds or profits which may be received in the future.

(d) If there are two or more beneficiaries and if the available proceeds or profits are insufficient to pay all beneficiaries, the proceeds or profits shall be equitably apportioned among the beneficiaries taking into account the impact of the crime upon them.

Prior to any distribution of any proceeds to a beneficiary, the court shall determine whether the convicted felon has failed to pay any portion of a restitution fine or penalty fine imposed by a court, or any restitution imposed as a condition of probation. The court shall also determine whether the felon is obligated to reimburse a governmental entity for the costs of his or her defense and whether a portion of the proceeds is needed to cover his or her reasonable attorney's fees incurred in the criminal proceeding related to the felony, or any appeal or other related proceeding, or in the defense of the action brought under this section. The court shall order payment of these obligations prior to any payment to a beneficiary, except that 60 percent of the proceeds or profits shall be reserved for payment to the beneficiaries.

(e) (1) The Attorney General may bring an action to require proceeds or profits received by a convicted felon to be held in an express trust in a bank authorized to act as a trustee.

(2) An action may be brought under this subdivision within one year after the receipt of proceeds or profits by a convicted felon or one year after the date of conviction, whichever is later.

That action may be brought in the superior court of any county in which the Attorney General has an office.

(3) If the Attorney General proves that the proceeds or profits are proceeds or profits from the sale of a story or thing of value which

are subject to an involuntary trust pursuant to this section, and that it is more probable than not that there are beneficiaries within the meaning of this section, the court shall order that all proceeds or profits be deposited in a bank and held by the bank as trustee of the trust until an order of disposition is made by a court pursuant to subdivision (d), or until the expiration of the period specified in subdivision (b).

(4) If the Attorney General prevails in an action under this subdivision, the court shall order the payment from the proceeds or profits to the Attorney General of reasonable costs and attorney's fees.

(f) In any action brought pursuant to subdivision (d) or (e), upon motion of a party the court shall grant a preliminary injunction to prevent any waste of proceeds or profits if it appears that the proceeds or profits are subject to the provisions of this section, and that they may be subject to waste.

(g) Any violation of an order of a court made pursuant to this section shall be punishable as contempt.

(h) The remedies provided by this section are in addition to other remedies provided by law.

No period of limitations, except those provided by this section, shall limit the right of recovery under this section.

SEC. 2. If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the orderly implementation of the provisions of this act, it is necessary that this act take immediate effect.

CHAPTER 557

An act to amend Section 1279.5 of the Code of Civil Procedure, and to amend Section 2933.6 of the Penal Code, relating to prisoners.

[Approved by Governor September 12, 1994. Filed with Secretary of State September 13, 1994.]

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

SECTION 1. Section 1279.5 of the Code of Civil Procedure is amended to read:

1279.5. (a) Except as provided in subdivision (b), nothing in this title shall be construed to abrogate the common law right of any

person to change his or her name.

(b) Notwithstanding any other law, no person imprisoned in the state prison and under the jurisdiction of the Director of Corrections shall be allowed to file an application for change of names pursuant to Section 1276, except as permitted at the discretion of the Director of Corrections.

SEC. 2. Section 2933.6 of the Penal Code is amended to read:

2933.6. (a) Notwithstanding any other law, a person who is placed in a Security Housing Unit or an Administrative Segregation Unit for misconduct described in subdivision (b) shall be ineligible to earn work credits or good behavior credits during the time he or she is in the Security Housing Unit or the Administrative Segregation Unit for that misconduct.

(b) This section shall apply to the following offenses:

(1) Murder, attempted murder, and solicitation of murder. For purposes of this paragraph, solicitation of murder shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances.

(2) Manslaughter.

(3) Assault or battery causing serious bodily injury.

(4) Assault or battery on a peace office or other nonprisoner which results in physical injury.

(5) Assault with a deadly weapon or caustic substance.

(6) Rape, attempted rape, sodomy, attempted sodomy, oral copulation, or attempted oral copulation accomplished against the victim's will.

(7) Taking a hostage.

(8) Escape or attempted escape with force or violence.

(9) Escape from any departmental prison or institution other than a camp or reentry facility.

(10) Possession or manufacture of a deadly weapon or explosive device.

(11) Arson involving damage to a structure.

(12) Possession of flammable, explosive material with intent to burn any structure or property.

(13) Solicitation of assault with a deadly weapon or assault by means of force likely to produce great bodily injury, arson, or a forcible sex act.

(14) Intentional destruction of state property in excess of four hundred dollars ($400) during a riot or disturbance.

(c) This section shall not apply if the administrative finding of the misconduct is overturned or if the person is criminally prosecuted for the misconduct and is found not guilty.

CHAPTER 558

An act to amend Section 5060 of, and to add Sections 5063 and 5067 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 14, 1994. Filed with Secretary of State September 14, 1994.]

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

SECTION 1. Section 5060 of the Vehicle Code is amended to read:

5060. (a) Any person described in Section 5101 may also apply for a set of special interest license plates, and the department shall issue those special interest license plates in lieu of the regular license plates if the issuance of those plates is authorized by this article. The plates shall provide a space to the left of the numerical series and below the numerical series for a distinctive design or decal as authorized by this article. The plates shall be issued in sequential numerical order. The distinctive design or decal shall be approved by the department.

(b) An organization participating in the special interest license plate program pursuant to this article may indicate to the department its intent to be included in the special interest license plate program and submit its proposed distinctive design for the plate. However, no organization may be included in the program until not less than 5,000 applications for the particular special interest license plates are received. Each organization shall collect and hold applications for the plates until it has received at least 5,000 applications. Once the organization has received at least 5,000 applications, it shall submit the applications, along with the necessary fees, to the department. The department shall not issue any special interest license plate until an organization has received and submitted to the department not less than 5,000 applications for that particular special interest license plate within the time period prescribed in this section. Advanced payment to the department by an organization representing the department's estimated or actual administrative costs associated with the issuance of a particular special interest license plate shall not constitute compliance with the requirement that the organization submit not less than 5,000 applications to the department within the prescribed time period. The organization shall have one calendar year to receive the required applications following enactment of the specific legislation enabling the organization to participate in this program. If, after that calendar year, 5,000 applications have not been received, the organization shall immediately do either of the following:

(1) Refund to all applicants any fees or deposits that have been collected.

(2) Contact the department to indicate the organization's intent

to undertake collection of additional applications and fees or deposits for an additional period, not to exceed 12 months, in order to obtain the minimum 5,000 applications. If an organization elects to exercise the option under this paragraph, it shall contact each applicant who has submitted an application with the appropriate fees or deposits to determine if the applicant wishes a refund of fees or deposits or requests the continuance of the holding of the application and fees or deposits until that time that the organization has received 5,000 applications. The organization shall refund the fees or deposits to any applicant so requesting. In no event shall an organization collect and hold applications for a period exceeding two calendar years following the operative date of the specific legislation enabling the organization to participate in the program.

(c) The department shall deduct its costs to develop and administer the special interest license plate program from the revenues collected for the plates.

(d) When payment of renewal fees is not required as specified in Section 4000, or when a person determines to retain the special interest license plate upon a sale, trade, or other release of the vehicle upon which the plate has been displayed, the person shall notify the department and the person may retain and use the plate as authorized by department regulations.

(e) An organization that is eligible to participate in a special interest license plate program pursuant to this article and receives funds from the additional fees collected from the sale of special license plates shall not expend more than 25 percent of those funds on marketing or other promotional activities associated with encouraging application for, or renewal of, the special license plates. This subdivision does not apply to any expenses incurred prior to January 1, 1995.

SEC. 2. Section 5063 is added to the Vehicle Code, to read:

5063. (a) The department, in consultation with the Monterey Bay National Marine Sanctuary, shall design and make available for issuance special interest license plates in accordance with Section 5060. The license plates shall bear a design depicting one or more significant features or qualities of the Monterey Bay National Marine Sanctuary.

(b) In addition to the regular fees for an original registration, renewal of registration, or transfer or substitution of the license plates, the following additional fees shall be paid for the issuance, renewal, retention, transfer, and substitution of the special interest license plates authorized by this section:

(1) For the original issuance of the plates, fifty dollars ($50).

(2) For a renewal of registration of the plates or retention of the plates, if renewal is not required, forty dollars ($40).

(3) For transfer of the plates to another vehicle, fifteen dollars ($15).

(4) For each substitute replacement plate, thirty-five dollars ($35).

(5) In addition, for the issuance of an environmental license plate, as defined in Section 5103, the additional fees prescribed in Sections 5106 and 5108. The additional fees prescribed in Sections 5106 and 5108 shall be deposited in the California Environmental License Plate Fund.

(c) After deducting its administrative costs under this section, the department shall deposit the additional revenue derived from the issuance, renewal, transfer, and substitution of the special interest license plates as follows:

(1) One-half in the Monterey Bay National Marine Sanctuary Account, which is hereby created in the California Environmental License Plate Fund. Upon appropriation by the Legislature, the money in the account shall be allocated by the Controller to the Association of Monterey Bay Area Governments which shall act as a trustee for disbursement and expenditure for the enhancement of the natural resources of the sanctuary and the education of the public about the sanctuary.

(2) One-half in the California Environmental License Plate Fund.

SEC. 3. Section 5067 is added to the Vehicle Code, to read:

5067. (a) The department, in consultation with the California Coastal Commission, shall design and make available for issuance pursuant to this article special environmental design license plates. Notwithstanding subdivision (a) of Section 5060, the special environmental design license plates shall bear a graphic design depicting a California coastal motif and may be issued in a combination of numbers or letters, or both, as requested by the applicant for the plates. Any person described in Section 5101 may, upon payment of the additional fees set forth in subdivision (b), apply for and be issued a set of special environmental design license plates.

(b) In addition to the regular fees for an original registration or renewal of registration, the following additional fees shall be paid for the issuance, renewal, retention, or transfer of the special environmental design license plates authorized pursuant to this section:

(1) For the original issuance of the plates, fifty dollars ($50).

(2) For a renewal of registration of the plates or retention of the plates, if renewal is not required, forty dollars ($40).

(3) For transfer of the plates to another vehicle, fifteen dollars ($15).

(4) For each substitute replacement plate, thirty-five dollars ($35).

(5) In addition, for the issuance of an environmental license plate, as defined in Section 5103, the additional fees prescribed in Section 5106 and 5108. The additional fees prescribed in Sections 5106 and 5108 shall be deposited in the California Environmental License Plate Fund.

(c) After deducting its administrative costs under this section, the department, except as provided in paragraph (5) of subdivision (b),

shall deposit the additional revenue derived from the issuance, renewal, transfer, and substitution of special environmental design license plates as follows:

(1) One-half in the California Beach and Coastal Enhancement Account, which is hereby created in the California Environmental License Plate Fund. Upon appropriation by the Legislature, the money in the account shall be allocated by the Controller to the California Coastal Commission for expenditure for the Adopt-A-Beach program, the Beach Cleanup Day program, coastal public education programs, and grants to local governments and nonprofit organizations for the costs of operating and maintaining public beaches related to these programs. Any funds remaining in the California Beach and Coastal Enhancement Account at the end of a fiscal year shall be allocated by the Controller, after appropriation by the Legislature, to the State Coastal Conservancy for coastal natural resource restoration and enhancement projects and for other projects consistent with the provisions of Division 21 (commencing with Section 31000) of the Public Resources Code.

(2) One-half in the California Environmental License Plate Fund.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 559

An act relating to fire protection.

[Approved by Governor September 14, 1994. Filed with Secretary of State September 14, 1994.]

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

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) Every year, urban wildfires destroy the homes and commercial properties of hundreds of Californians, resulting in enormous personal and financial losses to victims.

(b) The fires of 1993 highlighted the vulnerability of many communities, such as Malibu and Laguna Beach, which are located near the urban and wildland interface and are threatened by wildfires of extraordinary intensity.

(c) The heroic efforts of firefighting personnel and of the commendable federal, state, and local fire protection agencies saved thousands of structures during the 1993 blazes. Yet, despite the superb performance of existing fire protection operations, urban wildfires are difficult to control, often ravaging many structures and lands well beyond the source of the fire. Thus, new strategies and techniques for battling these infernos must be explored.

(d) A waterscooping fixed-wing turboprop aircraft, known as a Superscooper, is used successfully to battle urban wildfires in other countries, principally in France, in the coastal areas near the Mediterranean Sea, as part of an integrated firefighting system. The Superscooper could be a valuable addition to California's firefighting arsenal, and should be given immediate consideration for use in future fire seasons.

(e) The aircraft should be fully evaluated by the state to determine how to best apply the waterscooping capability of the aircraft, considering its successful use in France and other countries.

SEC. 2. (a) If federal funds are obtained for the purpose, the Department of Forestry and Fire Protection shall lease or otherwise secure, on a trial basis, two fixed-wing turboprop aircraft that have waterscooping capabilities, and utilize those aircraft, depending on their availability, during all or part of the 1995 and 1996 fire seasons. The department shall select aircraft that are able to do, at a minimum, all of the following:

(1) Scoop water from a bay, ocean, reservoir, or lake.

(2) Drop the water together with foam flame retardant directly on a fire.

(3) Operate for several hours without returning to a land base to reload or refuel.

(b) Before leasing or otherwise securing the aircraft, the department shall appoint a technical advisory committee to assist the department in evaluating the aircraft. The committee shall be comprised of the State Fire Marshal, firefighters from the counties participating in the trial of the aircraft, representatives of agencies currently operating the Superscooper aircraft, the manufacturer of the aircraft, and any other members designated by the department.

(c) The department shall minimize the cost of the evaluation of the aircraft and shall structure the evaluation with maximum flexibility regarding operations and deployment, provided that the fire conditions encountered by the aircraft during the evaluation period approximate those conditions encountered by other state-owned or contracted firefighting aircraft in carrying out fire suppression activities. As far as possible, the department shall coordinate the evaluation of the aircraft with any other efforts by the department to evaluate replacement aircraft for its air tanker fleet.

(d) The aircraft shall be assigned to one of the department's existing air tanker bases and be available for operation to meet initial attack requirements for the duration of the fire season. If possible, one of the aircraft shall be based in southern California and one shall

be based in northern California. The department shall make the aircraft available for use in, but not limited to, the Counties of Alameda, Contra Costa, El Dorado, Los Angeles, Orange, San Diego, Santa Barbara, and Ventura. The aircraft and their flightcrews shall be made available for deployment, operation, and testing purposes from other air tanker bases operated by the state and federal government at various times during the fire season, including extended fire sieges away from the aircraft's primary base. Command and control of the aircraft shall be under the direction of the department. The department shall recover from the federal government any applicable emergency costs incurred when the aircraft is utilized in the suppression of wildfires on United States Forest Service or Bureau of Land Management lands in California or other states.

(e) On or before March 1, 1997, and subject to the conditions specified in subdivisions (a), (c), and (d) of this section, the department, with the assistance of the technical advisory committee, shall complete an evaluation of the effectiveness of integrating the aircraft into the state's firefighting system. The evaluation shall consider the effectiveness of the aircraft, taking into account the differences between waterscooping aircraft and traditional land-based aircraft, and shall also consider the ways in which waterscooping aircraft complement other existing firefighting aircraft. The evaluation shall consider alternative methods for securing the aircraft, including, but not limited to, purchase, lease, and lease with an option to purchase. The evaluation shall include a cost-benefit analysis. In preparing the evaluation, the department shall additionally consider the findings of any evaluation of a fixed-wing turboprop aircraft with waterscooping capabilities conducted by a county or counties in 1994, 1995, or 1996. The results of the evaluation shall be submitted to the Governor, the Chairs of the Assembly Committees on Ways and Means and Natural Resources and the Chairs of the Senate Committees on Budget and Fiscal Review and Natural Resources and Wildlife.

CHAPTER 560

An act to amend Section 3041.5 of the Penal Code, relating to parole.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 3041.5 of the Penal Code is amended to read:

3041.5. (a) At all hearings for the purpose of reviewing a

prisoner's parole suitability, or the setting, postponing, or rescinding of parole dates, the following shall apply:

(1) At least 10 days prior to any hearing by the Board of Prison Terms, the prisoner shall be permitted to review his or her file which will be examined by the board and shall have the opportunity to enter a written response to any material contained in the file.

(2) The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his or her own behalf.

(3) Unless legal counsel is required by some other provision of law, a person designated by the Department of Corrections shall be present to insure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact that have not been resolved by departmental or other procedures.

(4) The prisoner shall be permitted to request and receive a stenographic record of all proceedings.

(5) If the hearing is for the purpose of postponing or rescinding of parole dates, the prisoner shall have rights set forth in paragraphs (3) and (4) of subdivision (c) of Section 2932.

(b) (1) Within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his or her parole date, the conditions he or she must meet in order to be released on the date set, and the consequences of failure to meet those conditions.

(2) Within 20 days following any meeting where a parole date has not been set for the reasons stated in subdivision (b) of Section 3041, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated.

The board shall hear each case annually thereafter, except the board may schedule the next hearing no later than the following:

(A) Two years after any hearing at which parole is denied if the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following year and states the bases for the finding.

(B) Up to five years after any hearing at which parole is denied if the prisoner has been convicted of murder, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding in writing. If the board defers a hearing five years, the prisoner's central file shall be reviewed by a deputy commissioner within three years at which time the deputy commissioner may direct that a hearing be held within one year. The prisoner shall be notified in writing of the deputy commissioner's decision. The board shall adopt procedures that relate to the criteria for setting the hearing between two and five years.

(3) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the

reason or reasons for that action and shall offer the prisoner an opportunity for review of that action.

(4) Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for that action, and shall schedule the prisoner's next hearing within 12 months and in accordance with paragraph (2).

CHAPTER 561

An act to amend Sections 22445 and 22446.5 of, to add Sections 22442.2 and 22442.3 to, and to add and repeal Section 22442.4 of, the Business and Professions Code, relating to immigration consultants.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 22442.2 is added to the Business and Professions Code, to read:

22442.2. (a) An immigration consultant shall conspicuously display in his or her office a notice that shall be at least 12 inches by 20 inches with boldface type or print with each character at least one inch in height and width in English and in the native language of the consultant's clientele, the following information:

(1) The full name, address, and evidence of compliance with any applicable bonding requirement including the bond number, if any.

(2) A statement that the consultant is not an attorney.

(b) Prior to providing any services, an immigration consultant shall provide the client with written disclosure which shall include the immigration consultant's name, address, telephone number, agent for service of process, and evidence of compliance with any applicable bonding requirement, including the bond number, if any.

SEC. 2. Section 22442.3 is added to the Business and Professions Code, to read:

22442.3. An immigration consultant shall not, with the intent to mislead, literally translate, from English into another language, the words or titles, including, but not limited to, "notary public," "notary," "licensed," "attorney," "lawyer," or any other terms that imply that the person is an attorney, in any document, including an advertisement, stationery, letterhead, business card, or other comparable written material describing the immigration consultant.

(b) For purposes of this section, "literal translation" of a word or phrase from one language means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language that is being translated.

(c) An immigration consultant may not make or authorize the

making of any verbal or written references to his or her compliance with the bonding requirements of Section 22443.1 except as provided in this chapter.

SEC. 3. Section 22442.4 is added to the Business and Professions Code, to read:

22442.4. An immigration consultant shall notify the Secretary of State's office within 30 days of any change of name, address, telephone number, or agent for service of process.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 4. Section 22445 of the Business and Professions Code is amended to read:

22445. (a) A person who violates this chapter shall be subject to a civil penalty not to exceed ten thousand dollars ($10,000) for each violation, to be assessed and collected in a civil action brought by any person injured by the violation.

(b) In addition to the provisions of subdivision (a), a violation of this chapter is a misdemeanor punishable by a fine of not less than two thousand dollars ($2,000) or more than ten thousand dollars ($10,000), as to each client with respect to whom a violation occurs, or imprisonment in the county jail for not more than one year, or by both fine and imprisonment. However, payment of restitution to a client shall take precedence over payment of a fine.

A second or subsequent violation is punishable by imprisonment in state prison.

(c) Subdivision (b) shall not apply to violations of Sections 22442.2, 22442.3, and 22442.4.

SEC. 5. Section 22446.5 of the Business and Professions Code is amended to read:

22446.5. (a) A person claiming to be aggrieved by a violation of this chapter by an immigration consultant may bring a civil action for injunctive relief or damages, or both. If the court finds that the defendant has violated a provision of this chapter, it shall award actual damages, plus an amount equal to treble the amount of actual damages or one thousand dollars ($1,000) per violation, whichever is greater. The court shall also grant a prevailing plaintiff reasonable attorneys' fees and costs.

(b) Any other party who, upon information and belief, claims a violation of this chapter has been committed by an immigration consultant may bring a civil action for injunctive relief on behalf of the general public and, upon prevailing, shall recover reasonable attorneys' fees and costs.

(c) An action brought under this chapter shall be set for trial at the earliest possible date, and shall take precedence over all other cases, except older matters of the same character and matters to which special preference may be given by law.

SEC. 6. Section 3 of this act shall become operative only if Assembly Bill 3137 of the 1993–94 Regular Session is also enacted and

becomes operative.

CHAPTER 562

An act to amend Section 22443 of, and to add and repeal Sections 22443.1 and 22447 of, the Business and Professions Code, relating to immigration consultants.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 22443 of the Business and Professions Code is amended to read:

22443. (a) A person engaged in the business or acting in the capacity of an immigration consultant shall deliver to a client a copy of each document or form completed on behalf of the client. Each document and form delivered must include the name and address of the immigration consultant.

(b) A person engaged in the business or acting in the capacity of an immigration consultant shall retain copies of all documents and forms of a client for not less than three years from the date of the last service to the client.

(c) No person engaged in the business or acting in the capacity of an immigration consultant shall retain in his or her possession original documents of a client.

SEC. 2. Section 22443.1 is added to the Business and Professions Code, to read:

22443.1. (a) Prior to engaging in the business or acting in the capacity of an immigration consultant, each person shall file with the Secretary of State a bond of ten thousand dollars ($10,000) executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to ten thousand dollars ($10,000). The bond may be terminated pursuant to Section 995.440 of, and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person damaged by any fraud, misstatement, misrepresentation, unlawful act or omission, or failure to provide the services of the immigration consultant or the agents, representatives, or employees of the immigration consultant while acting within the scope of that employment or agency.

(c) The Secretary of State shall charge a filing fee to cover the cost of filing the bond or the deposit filed in lieu of a bond as set forth in Section 995.710 of the Code of Civil Procedure.

(d) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds or deposits.

(e) A deposit may be made in lieu of a bond as set forth in Section 995.710 of the Code of Civil Procedure. When a deposit is made in lieu of the bond, the person asserting the claim against the deposit shall establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in subdivision (a) of Section 22447.

(f) The Secretary of State may retain a cash deposit for two years from the date the payer of the deposit has ceased to engage in the business or act in the capacity of an immigration consultant, provided that there are no outstanding claims against the deposit. A judge of a municipal or superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit.

(g) Approval and payment of the claims by the Secretary of State shall be in accordance with subdivisions (b) to (e), inclusive, of Section 1812.105 of the Civil Code.

(h) This section does not apply to employees of nonprofit, tax-exempt corporations who help clients complete application forms in immigration matters, either free of charge or for a fee. Any fees charged may include reasonable costs and shall be consistent with fees authorized by the United States Immigration and Naturalization Service for qualified designated entities.

(i) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 3. Section 22447 is added to the Business and Professions Code, to read:

22447. (a) A person who is awarded damages in an action or proceeding for injuries caused by the acts of a person engaged in the business of, or acting in the capacity of, an immigration consultant, in the performance of his or her duties as an immigration consultant, may recover damages from the bond or cash deposit required by Section 22443.1.

(b) When any claim or claims against a bond or a deposit in lieu of a bond have been paid so as to reduce the principal amount of the bond or deposit remaining available to pay claims below the principal amount required by Section 22443.1, the immigration consultant shall cease to conduct any business unless and until that time as the bond has been reinstated or moneys have been deposited in the deposit account with the Secretary of State to bring the bond or deposit account balance available for the payment of claims up to the minimum amount required by Section 22443.1.

(c) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 563

An act to add Section 68109 to the Government Code, relating to undocumented felons.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Although problems presented by undocumented criminal aliens can only be addressed by the federal government, undocumented criminal aliens who are imprisoned in state and local correctional facilities have become a major financial burden on this state.

(b) The Department of Corrections estimates that as of December 31, 1993, there were more than 18,000 undocumented aliens imprisoned in the state prison who were subject to deportation. This figure represents approximately 14 percent of the total inmate population.

(c) The cost to this state for imprisoning undocumented criminal aliens is estimated at $409 million dollars for the 1994–95 fiscal year, approximately twenty-two thousand dollars ($22,000) per year per alien. This figure includes the cost of imprisoning and paroling undocumented criminal aliens housed in correctional facilities operated by the Department of Corrections and the Department of the Youth Authority.

(d) In early 1993, the Youth and Adult Correctional Agency estimated an annual cost of $56.2 million dollars for the imprisonment of 3,325 "convicted undocumented alien felons" in county jails in this state. The agency estimated that there was a total of 6,971 undocumented aliens imprisoned in county jails in 1992, representing 9 percent of the total inmate population.

(e) California is in need of federal assistance, in the form of federal funding or federal prison space for the imprisonment of undocumented criminal aliens, to alleviate the impact of

undocumented criminal aliens on its criminal justice system.

(f) The Immigration Act of 1990 requires the states to share all criminal justice records of undocumented aliens who are convicted of felonies with the United States Immigration and Naturalization Service (INS).

(g) Local law enforcement agencies that testified before the Assembly Select Committee on Statewide Immigration Impact stressed the importance of intergovernmental cooperation in coping with problems involving undocumented criminal aliens.

(h) While undocumented criminal aliens may be deported through voluntary or formal deportation procedures, it is only through formal deportation hearings that it becomes a federal crime for an undocumented alien to reenter the United States illegally.

(i) The federal government cannot aggressively pursue undocumented aliens who enter the country illegally when they have not been formally deported.

(j) The INS cannot formally deport any person who is not properly within its jurisdiction.

(k) The earlier this state can refer undocumented aliens to the INS, the sooner formal deportation hearings can be conducted.

(*l*) Early cooperation with the INS will allow the federal government to perform its share of the work in protecting this state's borders and reducing state costs in imprisoning undocumented criminal aliens.

SEC. 2. Section 68109 is added to the Government Code, to read:

68109. (a) Every court of this state shall cooperate with the United States Immigration and Naturalization Service (INS) to identify and place a deportation hold on any defendant convicted of a felony who is determined to be an undocumented alien subject to deportation.

(b) As used in this section, "cooperate" means to provide the INS and its agents with access to all court records available to the public pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code and to provide any necessary paperwork within a reasonable time.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 564

An act to add Section 6101 to the Public Contract Code, relating to public works and purchase contracts.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 6101 is added to the Public Contract Code, to read:

6101. No state agency or department, as defined in Section 10357, that is subject to this code, shall award a public works or purchase contract to a bidder or contractor, nor shall a bidder or contractor be eligible to bid for or receive a public works or purchase contract, who has, in the preceding five years, been convicted of violating a state or federal law respecting the employment of undocumented aliens.

CHAPTER 565

An act to amend Sections 2911 and 5025 of, and to add Section 2912 to, the Penal Code, relating to undocumented aliens, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. The Legislature hereby finds and declares as follows:

(a) According to a 1993 report to the California Legislative Joint Committee on Prison Construction and Operations, approximately 16,000, or 15 percent, of the 109,000 California prison inmates are undocumented aliens.

(b) No coordinated legislative approach toward a comprehensive program related to these inmates has been developed, although a number of legislative bills have been introduced in the California Legislature in the last five years.

(c) Authorities ranging from the Immigration and Naturalization Service (INS) and California law enforcement representatives to the American Civil Liberties Union and immigrant rights groups generally concur that only a small percentage of legal and illegal immigrants commit serious crimes. However, these offenders, like felons who are United States citizens, impose social and economic costs, particularly in heavily impacted communities.

(d) Among the current 21,170 foreign-born California prison inmates, the Department of Corrections and the INS believe that approximately 16,000 of these inmates are deportable aliens. According to the Legislative Analyst, incarceration costs reach twenty-two thousand dollars ($22,000) per inmate per year. As such, it is estimated that the state's cost is approximately three hundred fifty million dollars ($350,000,000) per year to house criminal alien offenders in state prison.

(e) In 1992, the parole division of the Department of Corrections reported about 3,100 known alien felons on parole from the state's prisons and under supervision of parole officers. The cost to the state of supervising a parolee is normally placed at about two thousand dollars ($2,000) per year. Another 4,700 of these persons are on inactive parole. Administrative costs on each of these cases reach roughly two hundred dollars ($200) per parolee per year. Parole costs for criminal aliens is estimated at seven million dollars ($7,000,000) to eight million dollars ($8,000,000) per year.

(f) The Department of the Youth Authority estimates that 800 of its wards are undocumented alien youths. At an average cost per year of thirty thousand dollars ($30,000) for each of its wards, this places the total cost for undocumented alien youths at twenty-four million dollars ($24,000,000) per year.

(g) Criminal aliens come from over 130 nations.

(h) In contrast to the cost estimates to incarcerate undocumented aliens, INS estimates that the average cost to deport an individual felon is six hundred dollars ($600).

(i) In Soler v. Scott (9th Cir. 1991), 942 F. 2d 597, the Court declared that Congress enacted Section 1252(i) of Title 8 of the United States Code to accomplish a single objective: to require the INS to abandon its practice of postponing prisoner deportation hearings until the expiration of the prisoner's sentence.

(j) It is necessary to identify undocumented alien felons as expeditiously as possible to enable the INS to commence deportation proceedings pursuant to Section 1252(i) of Title 8 of the United States Code.

(k) Undocumented aliens who are convicted of deportable offenses are subject to federal jurisdiction upon conviction pursuant to Section 1252 of Title 8 of the United States Code.

(*l*) If the federal government does not have sufficient space in its prisons to imprison undocumented alien felons, it should appropriate the moneys necessary to reimburse this state for the costs it incurs in imprisoning those felons until that time as their sentences have been served or they are transferred to federal custody for imprisonment or deportation pursuant to the Immigration Reform and Control Act of 1986.

SEC. 2. It is the intent of the Legislature in enacting this act that no prisoner shall be returned to any foreign nation unless the federal government has received guarantees from that foreign nation that the prisoner will be imprisoned to serve the remainder of his or her

prison term in that foreign nation.

It is also the intent of the Legislature that upon the effective date of this act, a single undocumented alien felon who has been convicted of a nonviolent crime that is not specified in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 of the Penal Code shall be transported from the Department of Corrections to an INS holding facility located in this state for the purpose of subsequent transfer to federal custody.

It is further the intent of the Legislature that if the federal government refuses jurisdiction and custody of the single undocumented alien felon, the Attorney General shall immediately commence proceedings in federal court to determine the legality of the federal government's refusal to accept jurisdiction and custody.

SEC. 3. Section 2911 of the Penal Code is amended to read:

2911. (a) The Director of Corrections may enter into contracts, with the approval of the Director of General Services, with appropriate officials or agencies of the United States for the confinement, care, education, treatment, and employment of those persons convicted of criminal offenses in the courts of this state and committed to state prisons as the director believes can benefit by the confinement, care, education, treatment, and employment.

(b) Any contract entered into pursuant to subdivision (a) shall provide for (1) reimbursement to the United States government for the cost of those services, including any costs incurred by the government in transporting the prisoners, and (2) any other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the respective parties to the contract.

(c) No inmate may be transferred from an institution within this state to a federal facility pursuant to a contract entered into pursuant to subdivision (a) unless he or she has executed, in the presence of the warden or other head of the institution in this state in which he or she is confined, a written consent to the transfer. The inmate shall have the right to a private consultation with an attorney of his or her choice, concerning his or her rights and obligations under this section, prior to his or her appearance before the warden or other head of the institution for the purpose of executing the written consent.

(d) Whenever a contract has been made pursuant to this section the director may direct the transfer of an inmate to the facility designated and shall thereafter deliver the inmate to the custody of the appropriate federal officials for transportation to that facility. An inmate so transferred shall at all times be subject to the jurisdiction of this state and may at any time be removed from the facility in which he or she is confined for return to this state, for transfer to another facility in which this state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of this state; in all other respects, an inmate transferred to a federal facility shall be subject to all provisions of the law or regulations applicable

to persons committed for violations of laws of the United States not inconsistent with the sentence imposed on the inmate.

(e) The Board of Prison Terms, and the panels and members thereof, may meet at the federal facility where an inmate is confined pursuant to this section or enter into cooperative arrangements with corresponding federal agencies or officials, as necessary to carry out the term-fixing and parole functions. Nothing in this subdivision shall be deemed to waive an inmate's right to personally appear before the Board of Prison Terms.

(f) Any inmate confined pursuant to a contract entered into pursuant to this section shall be released within the territory of this state unless the inmate, this state and the federal government shall agree upon release in some other place. This state shall bear the cost of return of the inmate to its territory.

(g) This section shall not apply to an inmate who is transferred by the Department of Corrections to the United States Immigration and Naturalization Service pursuant to Section 5025.

SEC. 4. Section 2912 is added to the Penal Code, to read:

2912. (a) Under its Foreign Prisoner Transfer Program, the Board of Prison Terms shall devise a method of notifying each undocumented felon in a prison or reception center operated by the Department of Corrections that he or she may be eligible to serve his or her term of imprisonment in his or her country of origin as provided in federal treaties.

(b) (1) The Board of Prison Terms shall actively encourage each eligible undocumented felon to apply for return to his or her country of origin as provided in federal treaties and shall provide quarterly reports outlining its efforts under this section to the Chairperson of the Joint Legislative Budget Committee and the chairperson of each fiscal committee of the Legislature.

(2) The Board of Prison Terms shall adopt the model program developed by the State of Texas for encouraging participation in the federal repatriation program where appropriate.

SEC. 5. Section 5025 of the Penal Code is amended to read:

5025. (a) On or before July 1, 1993, the Department of Corrections shall implement and maintain procedures to identify inmates serving terms in state prison who are undocumented aliens subject to deportation. This identification procedure shall be completed, as to each inmate, within 90 days of the Department of Corrections having taken custody of the inmate.

(b) The procedures implemented by the department, pursuant to subdivision (a), shall include, but not be limited to, the following criteria for determining the country of citizenship of any person serving a term in state prison:

(1) Country of citizenship.
(2) Place of birth.
(3) Inmate's statements.
(4) Prior parole records.
(5) Prior arrest records.

(6) Probation Officer's Report (POR).

(7) Information from the Department of Justice's Criminal Identification and Information Unit.

(8) Other legal documents.

(c) The Department of Corrections shall report annually to the Legislature the number of persons identified as undocumented aliens pursuant to subdivision (a). The reports shall contain the number of persons referred, the race, national origin, and national ancestry of persons referred, the offense or offenses for which the person was committed to state prison, and the disposition of the referral, if known.

SEC. 6. The Legislature hereby appropriates five thousand dollars ($5,000) from the General Fund to the Board of Prison Terms for the purpose of implementing this legislation.

SEC. 7. The Legislature hereby memorializes the United States Congress to meet its obligations under the Immigration Reform and Control Act of 1986 and to reimburse the State of California for the costs it has incurred in incarcerating undocumented immigrants convicted of felonies.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to reduce the state's cost of incarcerating and supervising on parole those undocumented aliens who are convicted of felonies in this state, it is necessary that this act take effect immediately.

CHAPTER 566

An act to amend Sections 2911 and 5025 of, and to repeal Section 5026 of, the Penal Code, relating to corrections.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 2911 of the Penal Code is amended to read:

2911. (a) The Director of Corrections may enter into contracts, with the approval of the Director of General Services, with appropriate officials or agencies of the United States for the confinement, care, education, treatment and employment of such persons convicted of criminal offenses in the courts of this state and committed to state prisons as the director believes can benefit by such confinement, care, education, treatment, and employment.

(b) Any contract entered into pursuant to subdivision (a) shall provide for (1) reimbursement to the United States government for the cost of such services, including any costs incurred by such

government in transporting such prisoners, and (2) such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the respective parties to the contract.

(c) No inmate may be transferred from an institution within this state to a federal facility pursuant to such a contract unless he has executed, in the presence of the warden or other head of the institution in this state in which he is confined, a written consent to the transfer. The inmate shall have the right to a private consultation with an attorney of his choice, concerning his rights and obligations under this section, prior to his appearance before the warden or other head of the institution for the purpose of executing the written consent.

(d) Whenever a contract has been made pursuant to this section the director may direct the transfer of an inmate to the facility designated and shall thereafter deliver the inmate to the custody of the appropriate federal officials for transportation to such facility. An inmate so transferred shall at all times be subject to the jurisdiction of this state and may at any time be removed from the facility in which he is confined for return to this state, for transfer to another facility in which this state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of this state; in all other respects, an inmate transferred to a federal facility shall be subject to all provisions of the law or regulations applicable to persons committed for violations of laws of the United States not inconsistent with the sentence imposed on such inmate.

(e) The Board of Prison Terms, and the panels and members thereof, may meet at the federal facility where an inmate is confined pursuant to this section or enter into cooperative arrangements with corresponding federal agencies or officials, as necessary to carry out the term-fixing and parole functions. Nothing in this subdivision shall be deemed to waive an inmate's right to personally appear before the Board of Prison Terms.

(f) Any inmate confined pursuant to a contract entered into pursuant to this section shall be released within the territory of this state unless the inmate, this state and the federal government shall agree upon release in some other place. This state shall bear the cost of return of the inmate to its territory.

(g) This section shall not apply to any inmate or ward who is transferred by the Department of the Youth Authority or the Department of Corrections to the custody of the Attorney General of the United States pursuant to Section 5025.

SEC. 2. Section 5025 of the Penal Code is amended to read:

5025. (a) The Department of Corrections and the Department of the Youth Authority shall implement and maintain procedures to identify, within 90 days of assuming custody, inmates serving terms in state prison or wards of the Department of the Youth Authority who are undocumented felons subject to deportation. The Department of Corrections and the Department of the Youth

Authority shall refer to the United States Immigration and Naturalization Service the name and location of any inmate or ward who may be an undocumented criminal and may be subject to deportation for a determination of whether the inmate or ward is undocumented and subject to deportation. The Department of Corrections and the Department of the Youth Authority shall make case files available to the United States Immigration and Naturalization Service for purposes of investigation.

(b) The procedures implemented by the department, pursuant to subdivision (a), shall include, but not be limited to, the following criteria for determining the country of citizenship of any person serving a term in state prison:

(1) Country of citizenship.

(2) Place of birth.

(3) Inmate's statements.

(4) Prior parole records.

(5) Prior arrest records.

(6) Probation Officer's Report (POR).

(7) Information from the Department of Justice's Criminal Identification and Information Unit.

(8) Other legal documents.

(c) Within 48 hours of identifying an inmate or ward as an undocumented felon pursuant to subdivision (a), the Department of Corrections and the Department of the Youth Authority shall cause the inmate or ward to be transferred to the custody of the United States Attorney General for appropriate action. Once an inmate or ward has been identified as an undocumented felon by the United States Immigration and Naturalization Service, the inmate or ward shall not undergo any additional evaluation or classification procedures other than those required for the safety or security of the institution, the inmate or ward, or the public.

(d) The Department of Corrections shall report quarterly to the Legislature the number of persons referred to the United States Immigration and Naturalization Service pursuant to subdivision (a). The report shall contain the number of persons transported, the race, national origin, and national ancestry of persons transported, the offense or offenses for which the person was committed to state prison, and the facilities to which the persons were transported.

SEC. 3. Section 5026 of the Penal Code is repealed.

SEC. 4. It is the intent of the Legislature that the Governor take whatever steps are deemed necessary to notify the Congress of the United States of the federal government's obligations to this state under the Immigration Reform and Control Act of 1986 and of its responsibility to reimburse the state for costs incurred by the state to incarcerate undocumented felons.

SEC. 5. The Legislature finds that as of March 31, 1994, there were 13,558 persons in Department of Corrections facilities who were subject to United States Immigration and Naturalization Service (INS) holds and potentially an additional 5,415 persons in

these facilities subject to INS holds.

The Legislature further finds that as of the above date there were 471 persons in Youth Authority facilities who were subject to INS holds and potentially an additional 1,126 persons in these facilities subject to INS holds.

SEC. 6. Sections 1 to 3, inclusive, of this act shall become operative only upon the enactment of federal legislation requiring the United States government to imprison in the federal prison system any undocumented felon who is sentenced and imprisoned under the laws of this state for the entire term of the sentence imposed pursuant to state law.

CHAPTER 567

An act to amend Sections 2911 and 5025 of, and to repeal Section 5026 of, the Penal Code, relating to corrections.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 2911 of the Penal Code is amended to read:

2911. (a) The Director of Corrections may enter into contracts, with the approval of the Director of General Services, with appropriate officials or agencies of the United States for the confinement, care, education, treatment, and employment of persons convicted of criminal offenses in the courts of this state and committed to state prisons as the director believes can benefit by confinement, care, education, treatment, and employment.

(b) Any contract entered into pursuant to subdivision (a) shall provide for (1) reimbursement to the United States government for the cost of services, including any costs incurred by the federal government in transporting prisoners, and (2) other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the respective parties to the contract.

(c) No inmate may be transferred from an institution within this state to a federal facility pursuant to a contract unless he or she has executed, in the presence of the warden or other head of the institution in this state in which he or she is confined, a written consent to the transfer. The inmate shall have the right to a private consultation with an attorney of his or her choice, concerning his or her rights and obligations under this section, prior to his or her appearance before the warden or other head of the institution for the purpose of executing the written consent.

(d) Whenever a contract has been made pursuant to this section the director may direct the transfer of an inmate to the facility designated and shall thereafter deliver the inmate to the custody of

the appropriate federal officials for transportation to the facility. An inmate so transferred shall at all times be subject to the jurisdiction of this state and may at any time be removed from the facility in which he or she is confined for return to this state, for transfer to another facility in which this state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of this state; in all other respects, an inmate transferred to a federal facility shall be subject to all provisions of the law or regulations applicable to persons committed for violations of laws of the United States not inconsistent with the sentence imposed on the inmate.

(e) The Board of Prison Terms, and the panels and members thereof, may meet at the federal facility where an inmate is confined pursuant to this section or enter into cooperative arrangements with corresponding federal agencies or officials, as necessary to carry out the term-fixing and parole functions. Nothing in this subdivision shall be deemed to waive an inmate's right to personally appear before the Board of Prison Terms.

(f) Any inmate confined pursuant to a contract entered into pursuant to this section shall be released within the territory of this state unless the inmate, this state and the federal government shall agree upon release in some other place. This state shall bear the cost of return of the inmate to his or her territory.

(g) This section shall not apply to any inmate or ward who is transferred by the Department of the Youth Authority or the Department of Corrections to the custody of the Attorney General of the United States pursuant to Section 5025.

SEC. 2. Section 5025 of the Penal Code is amended to read:

5025. (a) Immediately upon the effective date of the amendments to this section made at the 1993–94 First Extraordinary Session of the Legislature, the Department of Corrections and the Department of the Youth Authority shall implement and maintain procedures to identify, within 90 days of assuming custody, inmates serving terms in state prison or wards of the Department of the Youth Authority who are undocumented felons subject to deportation. The Department of Corrections and the Department of the Youth Authority shall refer to the United States Immigration and Naturalization Service the name and location of any inmate or ward who may be an undocumented alien and may be subject to deportation for a determination of whether the inmate or ward is undocumented and subject to deportation. The Department of Corrections and the Department of the Youth Authority shall make case files available to the United States Immigration and Naturalization Service for purposes of investigation.

(b) The procedures implemented by the department, pursuant to subdivision (a), shall include, but not be limited to, the following criteria for determining the country of citizenship of any person serving a term in the state prison:

(1) Country of citizenship.

(2) Place of birth.
(3) Inmate's statements.
(4) Prior parole records.
(5) Prior arrest records.
(6) Probation Officer's Report (POR).
(7) Information from the Department of Justice's Criminal Identification and Information Unit.
(8) Other legal documents.

(c) Within 48 hours of identifying an inmate or ward as an undocumented felon pursuant to subdivision (a), the Department of Corrections and the Department of the Youth Authority shall cause the inmate or ward to be transferred to the custody of the United States Attorney General for appropriate action. Once an inmate or ward has been identified as an undocumented felon by the United States Immigration and Naturalization Service, the inmate or ward shall not undergo any additional evaluation or classification procedures other than those required for the safety or security of the institution, the inmate or ward, or the public.

(d) The Department of Corrections shall report quarterly to the Legislature the number of persons referred to the United States Immigration and Naturalization Service pursuant to subdivision (a). The report shall contain the number of persons transported, the race, national origin, and national ancestry of persons transported, the offense or offenses for which the person was committed to state prison, and the facilities to which the persons were transported.

SEC. 3. Section 5026 of the Penal Code is repealed.

SEC. 4. It is the intent of the Legislature that the Governor take whatever steps are deemed necessary to notify the Congress of the United States of the federal government's obligations to this state under the Immigration Reform and Control Act of 1986 and of its responsibility to reimburse the state for costs incurred by the state to incarcerate undocumented felons.

SEC. 5. The Legislature finds that as of March 31, 1994, there were 13,558 persons in Department of Corrections facilities who were subject to United States Immigration and Naturalization Service (INS) holds and potentially an additional 5,415 persons in these facilities subject to INS holds.

The Legislature further finds that as of the above date there were 471 persons in Youth Authority facilities who were subject to INS holds and potentially an additional 1,126 persons in these facilities subject to INS holds.

SEC. 6. Sections 1 to 3, inclusive, of this act shall become operative only upon the enactment of federal legislation requiring the United States government to imprison in the federal prison system any undocumented felon who is sentenced and imprisoned under the laws of this state for the entire term of the sentence imposed pursuant to state law.

SEC. 7. This bill shall only become operative if Assembly Bill 1874 is enacted.

CHAPTER 568

An act to amend Section 1714.1 of the Civil Code, relating to liability.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 1714.1 of the Civil Code is amended to read:

1714.1. (a) Any act of willful misconduct of a minor which results in injury or death to another person or in any injury to the property of another shall be imputed to the parent or guardian having custody and control of the minor for all purposes of civil damages, and the parent or guardian having custody and control shall be jointly and severally liable with the minor for any damages resulting from the willful misconduct.

Subject to the provisions of subdivision (c), the joint and several liability of the parent or guardian having custody and control of a minor under this subdivision shall not exceed twenty-five thousand dollars ($25,000) for each tort of the minor, and in the case of injury to a person, imputed liability shall be further limited to medical, dental and hospital expenses incurred by the injured person, not to exceed twenty-five thousand dollars ($25,000). The liability imposed by this section is in addition to any liability now imposed by law.

(b) Any act of willful misconduct of a minor which results in the defacement of property of another with paint or a similar substance shall be imputed to the parent or guardian having custody and control of the minor for all purposes of civil damages, including court costs, and attorney's fees, to the prevailing party, and the parent or guardian having custody and control shall be jointly and severally liable with the minor for any damages resulting from the willful misconduct, not to exceed twenty-five thousand dollars ($25,000), except as provided in subdivision (c), for each tort of the minor.

(c) The amounts listed in subdivisions (a) and (b) shall be adjusted every two years by the Judicial Council to reflect any increases in the cost of living in California, as indicated by the annual average of the California Consumer Price Index. The Judicial Council shall round this adjusted amount up or down to the nearest hundred dollars. On or before January 1, 1997, and on or before January 1 of each odd-numbered year thereafter, the Judicial Council shall compute and publish the amounts listed in subdivisions (a) and (b), as adjusted according to this subdivision.

(d) The maximum liability imposed by this section is the maximum liability authorized under this section at the time that the act of willful misconduct by a minor was committed.

(e) Nothing in this section shall impose liability on an insurer for a loss caused by the willful act of the insured for purposes of Section

533 of the Insurance Code. An insurer shall not be liable for the conduct imputed to a parent or guardian by this section for any amount in excess of ten thousand dollars ($10,000).

CHAPTER 569

An act to amend Sections 5068, 5069, and 5074 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 5068 of the Vehicle Code is amended to read:

5068. (a) (1) Any veterans' organization may apply either individually or with other veterans' organizations to meet the 5,000 application threshold set forth in Section 5060 for special interest plates. An organization that meets the 5,000 minimum application requirement by applying with other organizations pursuant to this subdivision shall be issued a regular license plate bearing a distinctive design or decal approved pursuant to subdivision (a) of Section 5060.

(2) Special interest plates issued pursuant to this section may be issued in a combination of numbers or letters, or both, requested by the owner or lessee of the vehicle, to be displayed in addition to the design or decal authorized under paragraph (1), subject to Section 5105.

(b) In addition to the regular fees for an original registration, a renewal of registration, or a transfer of registration, the following fees shall be paid by individuals applying for a veterans' organization special interest license plate or decal:

(1) Thirty dollars ($30) for the initial issuance of the plates or decals. The plates shall be permanent and shall not be required to be replaced.

(2) Thirty dollars ($30) for each renewal of registration which includes the continued display of the plates or decals.

(3) Fifteen dollars ($15) for transfer of the plates to another vehicle.

(4) Thirty-five dollars ($35) for replacement plates or decals, if they become damaged or unserviceable.

(5) Forty dollars ($40) for the personalization of the plates, as authorized under paragraph (2) of subdivision (a).

SEC. 2. Section 5069 of the Vehicle Code is amended to read:

5069. (a) Except as specified in subdivision (b), revenue derived from the additional special fees provided in Section 5068, less costs

incurred by the department pursuant to this article, shall be deposited in the Veterans Service Office Fund, created by Section 972.2 of the Military and Veterans Code.

(b) The revenue derived from the additional special fee provided in paragraph (5) of subdivision (b) of Section 5068, less costs incurred by the department pursuant to this article, shall be deposited as follows:

(1) One-half in the Veterans Service Office Fund.

(2) One-half in the California Environmental License Plate Fund.

SEC. 3. Section 5074 of the Vehicle Code, as amended by Section 1 of Chapter 414 of the Statutes of 1993, is amended to read:

5074. (a) This section shall be known and may be cited as the Polanco-Bates License Plates for the Arts Act of 1993. The California Arts Council shall participate in the special interest license plate program.

(b) In addition to the regular fees for an original registration or renewal of registration, the following additional fees shall be paid for the issuance, transfer, or renewal of license plates bearing, notwithstanding Section 5060, a full-plate graphic design, depicting a significant feature or quality of the State of California, approved by the department in consultation with the California Arts Council:

(1) For the original issuance of the plates, twenty dollars ($20).

(2) For a renewal of registration of the plates, ten dollars ($10).

(3) For the transfer of the special plates to another vehicle, fifteen dollars ($15).

(4) In addition, for the issuance of an environmental license plate, as defined in Section 5103, with a full-plate graphic design, the additional fees prescribed in Sections 5106 and 5108. The additional fees prescribed in Sections 5106 and 5108 shall be deposited in the Environmental License Plate Fund.

(c) Except as provided in paragraph (4) of subdivision (b), all fees collected under this section shall, after deduction of the department's costs in administering this section, be deposited in the Graphic Design License Plate Account in the General Fund, which is hereby created. The funds in the account shall be used by the California Arts Council, upon appropriation by the Legislature, for arts education and local arts programming.

(d) This section shall remain in effect only until July 1, 1994, and, as of that date is repealed.

SEC. 4. Section 5074 of the Vehicle Code, as added by Section 2 of Chapter 414 of the Statutes of 1993, is amended to read:

5074. (a) This section shall be known and may be cited as the Polanco-Bates License Plates for the Arts Act of 1993. The California Arts Council shall participate in the special interest license plate program.

(b) In addition to the regular fees for an original registration or renewal of registration, the following additional fees shall be paid for the issuance, transfer, or renewal of license plates bearing, notwithstanding Section 5060, a full-plate graphic design, depicting

a significant feature or quality of the State of California, approved by the department in consultation with the California Arts Council:

(1) For the original issuance of the plates, thirty dollars ($30).

(2) For a renewal of registration of the plates, fifteen dollars ($15).

(3) For the transfer of the special plates to another vehicle, fifteen dollars ($15).

(4) In addition, for the issuance of an environmental license plate, as defined in Section 5103, with a full-plate graphic design, the additional fees prescribed in Sections 5106 and 5108. The additional fees prescribed in Sections 5106 and 5108 shall be deposited in the Environmental License Plate Fund.

(c) Except as provided in paragraph (4) of subdivision (b), all fees collected under this section shall, after deduction of the department's costs in administering this section, be deposited in the Graphic Design License Plate Account in the General Fund, which is hereby created. The funds in the account shall be used by the California Arts Council, upon appropriation by the Legislature, for arts education and local arts programming.

(d) This section shall become operative on July 1, 1994.

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

In order to allow, at the earliest possible time, veteran's special interest plates to be issued in a combination of numbers or letters, or both, requested by the owner or lessee of the vehicle, to be displayed in addition to the design or decal authorized under existing law, and the transfer of Arts Council special interest license plates, upon the payment of a fee, to another vehicle, it is necessary that this act take effect immediately.

CHAPTER 570

An act to amend Sections 7685.3, 9662, 9765, and 9786 of the Business and Professions Code, and to amend Sections 7051, 7054.1, 7054.7, 7100, 8344.5, and 8346 of the Health and Safety Code, relating to cremation.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 7685.3 of the Business and Professions Code is amended to read:

7685.3. Commencing January 1, 1994, the current address, telephone number, and name of the State Board of Funeral Directors and Embalmers shall appear on the first page of any contract for

goods and services offered by a funeral director. At a minimum, the information shall be in 8-point boldface type and make this statement:

"FOR MORE INFORMATION ON FUNERAL MATTERS, CONTACT: STATE BOARD OF FUNERAL DIRECTORS AND EMBALMERS, (ADDRESS); TELEPHONE NUMBER (NUMBER)."

For the period of January 1, 1993, through December 31, 1993, a funeral director shall supply the above information in writing when presenting a sales contract to any individual.

SEC. 2. Section 9662 of the Business and Professions Code is amended to read:

9662. Commencing January 1, 1994, the current address, telephone number, and name of the Cemetery Board shall appear on the first page of any contract for goods and services offered by a cemetery authority or crematory. At a minimum, the information shall be in 8-point boldface type and make the following statement:

"FOR MORE INFORMATION ON CEMETERY AND CREMATION MATTERS, CONTACT: THE CEMETERY BOARD, (ADDRESS); TELEPHONE NUMBER (NUMBER)."

For the period January 1, 1993, through December 31, 1993, a cemetery authority or crematory operator shall supply the above information in writing when presenting a sales contract to any individual.

SEC. 3. Section 9765 of the Business and Professions Code is amended to read:

9765. Every cemetery authority operating a cemetery shall pay an annual regulatory charge for each cemetery to be fixed by the board at not more than four hundred dollars ($400), plus an additional charge of not more than fifty cents ($.50) for each burial, entombment, or inurnment, and not more than one dollar ($1) for each cremation, made during the preceding full calendar year, which charges shall be deposited in the Cemetery Fund. If the cemetery authority performed the cremation and either the burial, entombment, or inurnment, the total of all additional charges shall be not more than one dollar ($1).

SEC. 4. Section 9786 of the Business and Professions Code is amended to read:

9786. Every crematory licensee operating a crematory pursuant to a license issued in compliance with this article shall pay an annual regulatory charge for each crematory, to be fixed by the board at not more than four hundred dollars ($400), plus an additional charge of not more than one dollar ($1) per cremation made during the preceding full calendar year, which charges shall be deposited in the Cemetery Fund.

SEC. 5. Section 7051 of the Health and Safety Code is amended to read:

7051. Every person who removes any part of any human remains from any place where it has been interred, or from any place where it is deposited while awaiting interment or cremation, with intent to sell it or to dissect it, without authority of law, or written permission of the person or persons having the right to control the remains under Section 7100, or with malice or wantonness, has committed a public offense that is punishable by imprisonment in the state prison.

This section shall not prohibit the removal of foreign materials, pacemakers, or prostheses from cremated remains by an employee of a licensed crematory prior to final processing of ashes. Dental gold or silver, jewelry, or mementos, to the extent that they can be identified, may be removed by the employee prior to final processing if the equipment is such that it will not process these materials. However, any dental gold and silver, jewelry, or mementos that are removed shall be returned to the urn or cremated remains container, unless otherwise directed by the person or persons having the right to control the disposition.

SEC. 6. Section 7054.1 of the Health and Safety Code is amended to read:

7054.1. No cremated remains shall be removed from the place of cremation, nor shall there be any charge for the cremation, unless the cremated remains have been processed so that they are suitable for inurnment within a cremated remains container or an urn. Every contract for cremation services shall include specific written notification of the processing to the person having the right to control the disposition of the remains under Section 7100.

SEC. 7. Section 7054.7 of the Health and Safety Code is amended to read:

7054.7. (a) Except with the express written permission of the person entitled to control the disposition of the remains, no person shall:

(1) Cremate the remains of more than one person at the same time in the same cremation chamber, or introduce the remains of a second person into a cremation chamber until incineration of any preceding remains has been terminated and reasonable efforts have been employed to remove all fragments of the preceding remains. The fact that there is residue in the cremation chamber or other equipment or any container used in a prior cremation is not a violation of this section.

(2) Dispose of or scatter cremated remains in a manner or in a location that the remains are commingled with those of another person. This paragraph shall not apply to the scattering of cremated remains at sea from individual containers or to the disposal in a dedicated cemetery of accumulated residue removed from a cremation chamber or other cremation equipment.

(3) Place cremated or uncremated remains of more than one person in the same container or the same interment space. This

paragraph shall not apply to the following:

(A) Interment of members of the same family in a common container designed for the cremated remains of more than one person.

(B) Interment in a space or container that has been previously designated at the time of sale as being intended for the interment of remains of more than one person.

(C) Disposal in a dedicated cemetery of residue removed from a cremation chamber or other cremation equipment.

(b) Written acknowledgement from the person entitled to control the disposition of the cremated remains shall be obtained by the person with whom arrangements are made for disposition of the remains on a form that includes, but is not limited to, the following information: "The human body burns with the casket, container, or other material in the cremation chamber. Some bone fragments are not combustible at the incineration temperature and, as a result, remain in the cremation chamber. During the cremation, the contents of the chamber may be moved to facilitate incineration. The chamber is composed of ceramic or other material which disintegrates slightly during each cremation and the product of that disintegration is commingled with the cremated remains. Nearly all of the contents of the cremation chamber, consisting of the cremated remains, disintegrated chamber material, and small amounts of residue from previous cremations, are removed together and crushed, pulverized, or ground to facilitate inurnment or scattering. Some residue remains in the cracks and uneven places of the chamber. Periodically, the accumulation of this residue is removed and interred in a dedicated cemetery property, or scattered at sea." The acknowledgment shall be filed and retained, for at least five years, by the person who disposes of or inters the remains.

(c) Any person, including any corporation or partnership, knowingly violating any provision of this section is guilty of a misdemeanor.

SEC. 8. Section 7100 of the Health and Safety Code is amended to read:

7100. (a) The right to control the disposition of the remains of a deceased person, including the location and conditions of interment, unless other directions have been given by the decedent, vests in, and the duty of interment and the liability for the reasonable cost of interment of the remains devolves upon the following in the order named:

(1) The surviving spouse.

(2) The surviving child or children of the decedent, provided that, in the absence of actual knowledge to the contrary, a funeral director or cemetery authority may rely on instruction given by a child or children who represent (A) that they are the sole surviving child or children; (B) that they constitute a majority of the surviving children; or (C) that they have used reasonable efforts to notify all other surviving children of their instructions and are not aware of

any opposition to those instructions on the part of one-half or more of all surviving children.

(3) The surviving parent or parents of the decedent.

(4) The person or persons respectively in the next degrees of kindred.

(5) The public administrator when the deceased has sufficient assets.

(b) A funeral director or cemetery authority shall have complete authority to control the disposition of the remains, and to proceed under this chapter to recover usual and customary charges for the disposition, when both of the following apply:

(1) Either of the following applies:

(A) The funeral director or cemetery authority has knowledge that none of the persons described in paragraphs (1) to (4) of subdivision (a) exists.

(B) None of the persons described in paragraphs (1) to (4) of subdivision (a) can be found after reasonable inquiry, or contacted by reasonable means.

(2) The public administrator fails to assume responsibility for disposition of the remains within seven days after having been given written notice of the facts. Written notice may be delivered by hand, U.S. mail, facsimile transmission, or telegraph.

(c) The liability for the reasonable cost of final disposition devolves jointly and severally upon all kin of the decedent in the same degree of kindred and upon the estate of the decedent; provided, that should a person accept the gift of an entire body under subdivision (a) of Section 7155.5, that person, subject to the terms of the gift, shall be liable for the reasonable cost of final disposition of the decedent.

(d) (1) A decedent, prior to his or her death, may direct the preparation for, type, or place of interment of his or her remains, either by oral or written instructions, but a written contract for funeral services may only be modified in writing. The person or persons otherwise entitled to control the disposition of the remains under the provisions of this section shall faithfully carry out the directions of the decedent subject only to the provisions of this chapter with respect to the duties of the coroner.

(2) If the instructions are contained in a will, they shall be immediately carried out, regardless of the validity of the will in other respects or of the fact that the will may not be offered for or admitted to probate until a later date.

(e) This section shall be administered and construed to the end that the expressed instructions of the decedent or the person entitled to control the disposition shall be faithfully and promptly performed.

(f) A funeral director or cemetery authority shall not be liable to any person or persons for carrying out the instructions of the decedent or the person entitled to control the disposition.

SEC. 9. Section 8344.5 of the Health and Safety Code is amended to read:

8344.5. A crematory regulated by the Cemetery Board shall knowingly cremate only human remains in cremation chambers, along with the cremation container, personal effects of the deceased, and no more than a negligible amount of chlorinated plastic pouches utilized for disease control when necessary.

SEC. 10. Section 8346 of the Health and Safety Code is amended to read:

8346. Within two hours after a crematory licensed by the State of California takes custody of a body that has not been embalmed, it shall refrigerate the body at a temperature not greater than 50 degrees Fahrenheit unless the cremation process will begin within 24 hours of the time that crematory took custody.

CHAPTER 571

An act to amend Section 69619.1 of the Education Code, relating to education.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 69619.1 of the Education Code is amended to read:

69619.1. (a) The California School Paraprofessional Teacher Training Program is hereby established for the purpose of recruiting paraprofessionals to participate in a pilot program designed to encourage them to enroll in a teacher training program and to provide instructional service as a teacher in the public schools.

(b) On or before June 30, 1995, the Commission on Teacher Credentialing, in consultation with the Chancellor of the California Community Colleges, the Chancellor of the California State University, and representatives of certificated and classified employee organizations, shall select 12 or more school districts or county offices of education, each of which applies for that selection and has 300 or more classified employees, to participate in a pilot program for the recruitment of school paraprofessional employees who wish to enroll in teacher training programs. The commission shall ensure that a total of 600 school paraprofessionals are recruited from among the 12 participating school districts or county offices of education. The commission shall also require that at least 40 percent of the school paraprofessionals employed by each school district or county office of education selected to participate in the pilot program are members of racial and ethnic minority groups, as determined by data compiled under the California Basic Educational Data System maintained by the State Department of Education. The criteria adopted by the commission for the selection of school

districts or county offices of education to participate in the pilot program shall include the following:

(1) The extent to which the applicant district or county office demonstrates the capacity and willingness to accommodate the participation of school paraprofessionals of the district in teacher training programs conducted at institutions of higher education.

(2) The extent to which the applicant district's or county office's plan for the implementation of its recruitment program involves the active participation of one or more local campuses of the California Community Colleges or the California State University in the development of coursework and teaching programs for participating school paraprofessionals. Each selected school district or county office of education shall be required to enter into a written articulation agreement with the participating campuses of the California Community Colleges and the California State University.

(3) The extent to which the district's or county office's plan for recruitment attempts to meet the demand for bilingual crosscultural teachers.

(4) The extent to which the applicant district's or county office's plan for recruitment attempts to meet the demand for special education teachers.

(5) The extent to which the applicant district's or county office's plan for recruitment includes a developmentally sequenced series of job descriptions that lead from an entry level school paraprofessional position to an entry level teaching position in that district.

(c) Each selected school district or county office of education shall provide information and assistance to each school paraprofessional it recruits under the pilot program regarding admission to a teacher training program.

(d) The school district or county office of education shall recruit and organize groups, or "cohorts," of school paraprofessionals, of not less than 30 paraprofessionals in each cohort. Cohorts shall be organized to consist of school paraprofessionals having approximately equal academic experience and qualifications, as determined by the district or county office of education. The members of each cohort shall enroll in the same campus, and shall be provided by the school district or county office of education with appropriate support and information throughout the course of their studies. Each school district or county office of education shall certify that it has received a commitment from each member of a cohort that he or she will complete one school year of classroom instruction in the district or county office of education for each year that he or she receives assistance for books, fees, and tuition while attending a community college or a campus of the California State University under the program. To the extent possible, members of each cohort shall proceed through the same waiver and credential programs. If any participant does not fulfill his or her obligation to complete one year of classroom instruction for each year of financial assistance he or she received under the program, the participant shall be required

to repay the assistance to the extent he or she failed to meet that obligation. "Teacher training program," for the purposes of this article, means any undergraduate program of instruction conducted at a campus of the California Community Colleges, or undergraduate or graduate program conducted at a campus of the California State University, that is designed to qualify students enrolled in the program for a teaching credential authorizing instruction in kindergarten and grades 1 to 12, inclusive.

(e) The commission shall contract with an independent evaluator with a proven record of experience in assessing career-advancement teacher training programs to determine the success of the recruitment programs established pursuant to subdivision (b). The evaluation shall be made on an annual basis and shall include, but shall not be limited to, all of the following:

(1) The number and racial and ethnic classifications of school paraprofessionals successfully recruited under this article for participation in a teacher training program.

(2) The number and racial and ethnic classifications of school paraprofessionals participating in the pilot program who successfully complete the teacher training program each year.

(3) The total cost per person participating in the pilot program who successfully obtains a teaching credential, based upon all state, local, federal, and other sources of funding.

(4) The economic status of persons participating in the pilot program.

(5) A description of financial and other resources made available to each recruitment program by participating school districts or county offices of education, the California Community Colleges, the California State University, and other participating organizations.

(f) Each selected school district or county office of education shall report to the commission regarding the progress of each cohort of school paraprofessionals, and other information regarding its recruitment program as the commission may direct.

(g) No later than January 1, 1995, and again by January 1, 1996, and by January 1, 1997, the commission shall report to the Legislature regarding the status of the pilot program, including, but not limited to, the number of school paraprofessionals recruited, the academic progress of the school paraprofessionals recruited, the number of school paraprofessionals recruited who are subsequently employed as teachers in the public schools, the degree to which the program meets the demand for bilingual and special education teachers and the degree to which the program or similar programs can meet this need if properly funded and executed, and other effects upon the operation of the public schools.

(h) "Teaching paraprofessional," for the purposes of this article, includes the following job classifications: educational aide, special education aide, teacher associate, teacher assistant, teacher aide, pupil service aide, and library aide.

(i) "Local education agency" for the purposes of this article,

includes county offices of education that can participate in the pilot programs.

(j) It is the intent of the Legislature that, commencing with the 1993–94 fiscal year, funding for the California School Paraprofessional Teacher Training Program be allocated to the Commission on Teacher Credentialing for grants to school districts pursuant to this section.

SEC. 2. (a) The Legislature finds and declares that the Commission on Teacher Credentialing conducted a competition for award of funds for the purposes of the California School Paraprofessional Teacher Training Program pursuant to Section 69619.1 of the Education Code. As a result of that competition, seven schools were selected to receive funds pursuant to that program. However, funds were not appropriated for that program for the 1992–93 and 1993–94 fiscal years and thus the selected school districts did not receive funds for that program for those fiscal years.

(b) From funds appropriated for the purpose of the California School Paraprofessional Teacher Training Program in the Budget Act of 1994, the Commission on Teacher Credentialing shall make allocations as follows:

(1) The commission shall review each of the seven school districts selected to receive funds in the 1992 competition described in subdivision (a). If the commission determines that the conditions and circumstances that qualified each school district to receive those funds are substantially the same as or better than they were when the district was selected in 1992, the commission shall allocate funds to the school district pursuant to Section 69619.1 of the Education Code.

(2) To the extent funds remain after the allocations are made pursuant to paragraph (1), on or before June 30, 1995, the commission shall, pursuant to Section 69619.1 of the Education Code, select additional school districts to participate in the program.

CHAPTER 572

An act to add Chapter 1.5 (commencing with Section 229.10) to Division 1 of the Streets and Highways Code, relating to highways.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Tourist oriented directional signs are uniform signs identifying businesses and providing guidance to their location by indicating their direction and distance along state highways.

(2) The Federal Highway Administration first approved on an

experimental basis a tourist oriented directional sign program in the late 1970's and gave final approval in 1988 guidelines.

(3) A growing number of states, including Oregon, Washington, Maine, New Hampshire, Vermont, and New York, have successful tourist oriented directional sign programs.

(4) The current annual direct benefits of the tourist oriented directional sign programs in terms of 1990 sales, were estimated to be eighteen million three hundred thousand dollars ($18,300,000) in Oregon and seven million four hundred thousand dollars ($7,400,000) in Washington.

(5) Tourist oriented directional sign programs are self-supporting because private businesses pay the state to install and maintain the signs.

(b) The Legislature further finds and declares that tourist oriented directional signs provide business identification and directional information for businesses (including fresh, raw, or processed agricultural products), services, and activities, the major portion of whose income or visitors is derived during the normal business season from motorists not residing in the immediate area of the business or activity.

(c) It is the intent of the Legislature that generic tourist oriented directional signs in California be used only on highways where authorized by the federal government.

(d) In establishing a generic tourist oriented directional sign program, it is not the intent of the Legislature to limit or restrict outdoor or on-premise advertising structures along state highways or to diminish or create a conflict with the existing business logo sign program in rural areas pursuant to Section 101.7.

(e) The Legislature intends that the Department of Transportation consult with interested industry representatives in order to develop and design each industry's generic tourist oriented directional sign, rather than creating a new advisory committee for that purpose.

SEC. 2. Chapter 1.5 (commencing with Section 229.10) is added to Division 1 of the Streets and Highways Code, to read:

CHAPTER 1.5. TOURIST ORIENTED DIRECTIONAL SIGNS

Article 1. Scope

229.10. This chapter governs the administration, standards, eligibility, and fees concerning the tourist oriented directional sign program.

Article 2. Program Administration and Standards

229.18. The department shall administer the generic tourist oriented directional sign program and collect the fees described in this chapter.

229.19. The design and installation of signs pursuant to this chapter shall conform to any federal standards applicable to the highway. In addition, the signs shall meet the standards and criteria prescribed by this chapter, and shall be posted only in rural areas on noncongested conventional highways where a sign would not pose any traffic dangers or disrupt the free-flowing movement of vehicles.

The department shall not approve the placement of a sign under either of the following circumstances:

(a) Within the boundaries of any city.

(b) If the sign promotes gambling activities.

229.20. No signs authorized by this chapter shall be posted on any scenic highway, unless the county board of supervisors of the county in which the sign will be placed grants approval. Approval shall be given upon a modification of, and shall be consistent with, any existing corridor protection ordinance.

Article 3. Eligibility

229.25. The department shall determine that the facilities and attractions for which generic tourist oriented directional signs are provided meet the minimum criteria set forth in this article.

229.26. (a) Except as provided in subdivision (b), the distance from the nearest highway intersection to the nearest facility or attraction shall not exceed 10 miles.

(b) Notwithstanding subdivision (a), the maximum distance from the signed intersection to the nearest facility or attraction shall not exceed the following:

(1) One mile for a service station.

(2) Three miles for food or lodging facilities.

229.27. Facilities for which signing is provided shall be located on a reasonably direct and maintained route and have sufficient signing to guide the motorist to the facility and back to the highway, as determined by the department.

229.275. All sign contracts are for a two-year period and are subject to reevaluation by the department at the end of that period.

229.28. The number of generic tourist oriented directional signs shall not exceed three signs on an approach to an intersection from either direction. If more signs are requested than authorized by this section, the department shall select the three facilities or attractions receiving the highest rankings based on existing criteria and point ranking systems developed for other business signing programs. Based on the rankings, an existing sign posted pursuant to this chapter may be displaced by a new sign at the end of a two-year contract.

229.281. The department shall also take into consideration whether a business, attraction, or facility has existing on-premise or off-premise advertising structures located on nearby state highway when determining its eligibility for a generic tourist oriented directional sign.

229.285. Tourist oriented directional signs erected pursuant to this chapter shall not identify particular businesses or services by name, but rather shall be generic and identify only the type or nature of the business or service available.

229.286. Signs identifying the location or proximity of gambling activities are not eligible for placement under this chapter.

229.29. In order to be eligible for a generic tourist oriented directional sign, a majority of the businesses and attractions within 10 driving miles of the sign shall conform to all of the following:

(a) Open to the public at least 40 hours per week and six days per week, for a minimum of three continuous months per year, and maintain regular hours and schedules.

(b) Seasonal businesses and attractions closed more than one week at a time shall have the sign covered or removed by the department during the period of closure.

(c) Possess any appropriate business license approved by the state and local agency regulating the particular business.

(d) Each business or attraction identified on a tourist oriented directional sign shall provide assurance of its conformity with all applicable laws concerning the public accommodation without regard to race, color, sex, culture, social origin or condition, or political or religious ideas.

229.30. If a business or attraction violates any provision of this chapter or regulations adopted by the department, it may lose its eligibility for a tourist oriented directional sign. The department may request the immediate removal of a generic tourist oriented directional sign if a business or attraction violates any section of this law or regulations.

229.31. No business or attraction shall be eligible for a generic tourist oriented directional sign if it is adjacent to, and visible from, the highway.

Article 4. Fees

229.35. The department shall establish and charge a fee to place and maintain generic tourist oriented directional signs in an amount at least 25 percent above its estimated cost in designing, placing, and maintaining the signs. Funds derived from the imposition of the fee shall, upon appropriation, be used to fund all operations and related administrative functions of the department pursuant to this chapter.

Article 5. Termination

229.40. This chapter shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

CHAPTER 573

An act to add Sections 9392.5 and 9400.05 to the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 9392.5 is added to the Welfare and Institutions Code, to read:

9392.5. The department shall, in evaluating proposals for grants for programs under this chapter, give preference to proposals that would serve clients in underserved areas or areas without existing programs under this chapter.

SEC. 2. Section 9400.05 is added to the Welfare and Institutions Code, to read:

9400.05. The department shall, in evaluating proposals for grants for programs under this chapter, give preference to proposals that would serve clients in underserved areas or areas without existing programs under this chapter.

CHAPTER 574

An act making an appropriation for the payment of claims against the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. The sum of one million eight hundred seven thousand eighty-six dollars and four cents ($1,807,086.04) is hereby appropriated to the Secretary of the State Board of Control to pay claims accepted by the State Board of Control in accordance with the following schedule:

Total For Fund: Item 0160-001-001(A), Budget Act 1994	$974.58
Total For Fund: Item 0250-001-001(C), Budget Act 1994	$2,061.39
Total For Fund: Item 0690-001-001(B), Budget Act 1994	$22,935.69
Total For Fund: Item 0750-001-001(A), Budget Act 1994	$50.00
Total For Fund: Item 0820-001-001(D), Budget	

Act 1994	$280.00
Total For Fund: Item 0820-001-001(E), Budget Act 1994	$239.00
Total For Fund: Item 0820-001-001(G), Budget Act 1994	$394.46
Total For Fund: Item 0860-001-001(A), Budget Act 1994	$3,160.92
Total For Fund: Item 0890-001-001(B), Budget Act 1994	$10.00
Total For Fund: Item 1180-014-717, Budget Act 1994	$252.00
Total For Fund: Item 1400-001-108(A), Budget Act 1994	$2,535.00
Total For Fund: Item 1480-001-763(A), Budget Act 1994	$224.87
Total For Fund: Item 1490-001-767(A), Budget Act 1994	$500.00
Total For Fund: Item 1655-001-702(B), Budget Act 1994	$7,562.40
Total For Fund: Item 1700-001-001(A), Budget Act 1994	$5,000.00
Total For Fund: Item 1710-001-001(A), Budget Act 1994	$12,720.01
Total For Fund: Item 1730-001-001(A), Budget Act 1994	$326.12
Total For Fund: Item 1760-001-666(A), Budget Act 1994	$1,775.64
Total For Fund: Item 1760-001-666(B), Budget Act 1994	$444.64
Total For Fund: Item 1880-001-001(A), Budget Act 1994	$18.37
Total For Fund: Item 2260-001-042(B), Budget Act 1994	$545.00
Total For Fund: Item 2660-001-042(B), Budget Act 1994	$98,550.06
Total For Fund: Item 2720-001-044(A), Budget Act 1994	$28,344.58
Total For Fund: Item 2720-001-044(A), Budget Act 1994	$757.00
Total For Fund: Item 2740-001-044(A), Budget Act 1994	$13,788.52
Total For Fund: Item 3480-503-133, Ch. 1290, Stats. 1986	$38,172.16
Total For Fund: Item 3540-001-001(A), Budget Act 1994	$1,582.01
Total For Fund: Item 3540-001-001(B), Budget Act 1994	$8,640.50
Total For Fund: Item 3600-001-200(A), Budget Act 1994	$598.00

Total For Fund: Item 3600-001-200(C), Budget Act 1994	$11,075.95
Total For Fund: Item 3790-001-001(A), Budget Act 1994	$17,126.00
Total For Fund: Item 3790-001-001(B), Budget Act 1994	$328.93
Total For Fund: Item 3860-001-001(A), Budget Act 1994	$78.40
Total For Fund: Item 3860-001-001(C), Budget Act 1994	$150.10
Total For Fund: Item 3860-001-001(E), Budget Act 1994	$645.00
Total For Fund: Item 3900-001-044(A), Budget Act 1994	$120.90
Total For Fund: Item 3940-001-001(A), Budget Act 1994	$2,043.85
Total For Fund: Item 3960-001-014(A), Budget Act 1994	$58,975.82
Total For Fund: Item 3960-001-014(D), Budget Act 1994	$253.28
Total For Fund: Item 4130-001-632, Budget Act 1994	$55.00
Total For Fund: Item 4200-001-001(A), Budget Act 1994	$131.03
Total For Fund: Item 4260-001-001(1), Budget Act 1994	$1,411.00
Total For Fund: Item 4260-001-001(2), Budget Act 1994	$56,568.65
Total For Fund: Item 4300-003-001(A), Budget Act 1994	$119.95
Total For Fund: Item 4300-003-001(A), Budget Act 1994	$8,554.74
Total For Fund: Item 4300-101-001(A), Budget Act 1994	$7,221.16
Total For Fund: Item 4440-001-001(A), Budget Act 1994	$9,831.83
Total For Fund: Item 4440-001-001(B), Budget Act 1994	$5,828.00
Total For Fund: Item 4440-011-001(A), Budget Act 1994	$3,356.11
Total For Fund: Item 4440-011-001(B), Budget Act 1994	$1,270.00
Total For Fund: Item 5100-001-870(A), Budget Act 1994	$1,794.00
Total For Fund: Item 5100-001-870(B), Budget Act 1994	$16,537.16
Total For Fund: Item 5160-001-001(A), Budget Act 1994	$36,961.88
Total For Fund: Item 5160-101-001(A), Budget	

Act 1994	$12,505.17
Total For Fund: Item 5180-001-001(A), Budget Act 1994	$1,595.69
Total For Fund: Item 5180-001-001(D), Budget Act 1994	$1,067.00
Total For Fund: Item 5240-001-001(A), Budget Act 1994	$134,902.21
Total For Fund: Item 5440-001-001, Budget Act 1994	$9,327.51
Total For Fund: Item 5450-001-001(10), Budget Act 1994	$620.00
Total For Fund: Item 5460-001-001(A), Budget Act 1994	$2,003.31
Total For Fund: Item 5460-001-001(B), Budget Act 1994	$1,031.29
Total For Fund: Item 6110-001-001(A), Budget Act 1994	$500.00
Total For Fund: Item 6110-001-001(B), Budget Act 1994	$757.12
Total For Fund: Item 6110-001-001(D), Budget Act 1994	$131,581.80
Total For Fund: Item 6110-005-001(A), Budget Act 1994	$550.95
Total For Fund: Item 6610-001-001(A), Budget Act 1994	$813,576.58
Total For Fund: Item 7980-001-001(B), Budget Act 1994	$875.00
Total For Fund: Item 8140-001-001(A), Budget Act 1994	$28.67
Total For Fund: Item 8350-001-001(1), Budget Act 1994	$89.33
Total For Fund: Item 8350-001-001(2), Budget Act 1994	$550.00
Total For Fund: Item 8350-001-001(3), Budget Act 1994	$803.00
Total For Fund: Item 8350-001-001(5), Budget Act 1994	$6,041.70
Total For Fund: Item 8350-001-001(6), Budget Act 1994	$810.86
Total For Fund: Item 8570-001-001(A), Budget Act 1994	$434.00
Total For Fund: Item 8570-111-001(1), Budget Act 1994	$1,245.89
Total For Fund: Item 8660-001-412(A), Budget Act 1994	$8,594.49
Total For Fund: Item 8915-001-890(A), Budget Act 1994	$1,197.99
Total For Fund: Auctioneer Commission Fund	$112.00
Total For Fund: Bank and Corporation Tax Fund	$12,770.79

Total For Fund: California Water Resources Development Board Fund	$1,798.76
Total For Fund: Employment Development Department Contingent Fund	$3,520.36
Total For Fund: Federal Trust Fund	$10,729.00
Total For Fund: Federal Trust Fund (8915)	$94.73
Total For Fund: General Fund	$75,590.76
Total For Fund: Motor Vehicle Account	$7,453.00
Total For Fund: Motor Vehicle License Fee Account	$139.08
Total For Fund: Personal Income Tax Fund	$23,613.61
Total For Fund: Real Estate Fund	$162.00
Total For Fund: State Lottery Fund	$108.00
Total For Fund: State Teachers' Retirement Fund	$9,804.34
Total For Fund: Tax Relief and Refund Account	$33,002.86
Total For Fund: Unemployment Administration Fund	$3,037.53
Total For Fund: Unemployment Fund	$1,578.00

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to settle claims against the state and end hardship to claimants as quickly as possible, it is necessary that this act take effect immediately.

CHAPTER 575

An act to add Section 594.8 to the Penal Code, and to amend Section 656 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 594.8 is added to the Penal Code, to read:

594.8. Any person convicted of possession of a destructive implement with intent to commit graffiti or willfully affixing graffiti under Section 594.2, 640.5, 640.6, or 640.7, where the offense was committed when he or she was under the age of 18 years, shall perform not less than 24 hours of community service during a time other than during his or her hours of school attendance or employment. One parent or guardian shall be present at the

community service site for at least one-half of the hours of community service required under this section unless participation by the parent, guardian, or foster parent is deemed by the court to be inappropriate or potentially detrimental to the child.

SEC. 2. Section 656 of the Welfare and Institutions Code is amended to read:

656. A petition to commence proceedings in the juvenile court to declare a minor a ward of the court shall be verified and shall contain all of the following:

(a) The name of the court to which it is addressed.

(b) The title of the proceeding.

(c) The code section and subdivision under which the proceedings are instituted.

(d) The name, age, and address, if any, of the minor upon whose behalf the petition is brought.

(e) The names and residence addresses, if known to petitioner, of both of the parents and any guardian of the minor. If there is no parent or guardian residing within the state, or if his or her place of residence is not known to petitioner, the petition shall also contain the name and residence address, if known, of any adult relative residing within the county, or, if there are none, the adult relative residing nearest to the location of the court.

(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he or she is detained in custody, the date and the precise time the minor was taken into custody.

(h) A notice to the father, mother, spouse, or other person liable for support of the minor child, that: (1) Section 903 makes that person, the estate of that person, and the estate of the minor child, liable for the cost of the care, support, and maintenance of the minor child in any county institution or any other place in which the child is placed, detained, or committed pursuant to an order of the juvenile court; (2) Section 903.1 makes that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of legal services rendered to the minor by a private attorney or a public defender appointed pursuant to the order of the juvenile court; (3) Section 903.2 makes that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of the probation supervision of the minor child by the probation officer pursuant to the order of the juvenile court; and (4) the liabilities established by these sections are joint and several.

(i) In a proceeding alleging that the minor comes within Section 601, notice to the parent, guardian, or other person having control or charge of the minor that failure to comply with the compulsory school attendance laws is an infraction, which may be charged and

prosecuted before the juvenile court judge sitting as a municipal court judge. In those cases, the petition shall also include notice that the parent, guardian, or other person having control or charge of the minor has the right to a hearing on the infraction before a judge different than the judge who has heard or is to hear the proceeding pursuant to Section 601. The notice shall explain the provisions of Section 170.6 of the Code of Civil Procedure.

(j) If a proceeding is pending against a minor child for a violation of Section 594.2, 640.5, 640.6, or 640.7 of the Penal Code, a notice to the parent or legal guardian of the minor that if the minor is found to have violated that provision that (1) a portion of the community service required of the minor shall be performed in the presence, and under the direct supervision, of the parent or legal guardian unless otherwise specified in Section 594.8 of the Penal Code; and (2) if the minor is personally unable to pay any fine levied for the violation of Section 594.2, 640.5, 640.6, or 640.7 of the Penal Code, that the parent or legal guardian of the minor shall be liable for payment of the fine.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 576

An act to amend Section 9357.3 of, to add Article 9 (commencing with Section 9380) to Chapter 3.5 of Division 2 of Title 2 of, to add Chapter 5.5 (commencing with Section 20700) to Part 3 of Division 5 of Title 2 of, and to repeal Sections 20633, 20634, and 20635 of, the Government Code, relating to public retirement systems, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 9357.3 of the Government Code is amended to read:

9357.3. If the membership of a member is terminated, except by death or retirement pursuant to this chapter, he or she shall be paid forthwith all of his or her accumulated contributions and

accumulated supplemental contributions.

SEC. 2. Article 9 (commencing with Section 9380) is added to Chapter 3.5 of Division 2 of Title 2 of the Government Code, to read:

Article 9. Supplemental Contributions Program

9380. There is a member supplemental contributions program established within this system which is intended to be a defined contribution plan within the meaning of Section 414(i) of the Internal Revenue Code. The program shall operate solely at the option and expense of the members who elect to participate and shall in no way obligate the state for lifetime annuity payments to participating members or their beneficiaries. Any distribution arising from participation in the program shall be funded only by accumulated supplemental contributions.

9381. (a) A member on whose behalf the state is obligated to pay contributions may elect, in a manner prescribed by the board, to participate in the program. A participating member may make supplemental contributions to the program, in excess of his or her contributions required under Article 5 (commencing with Section 9357), for the purpose of supplementing retirement benefits under this system. The supplemental contributions shall be made solely at the option and expense of the member and shall be attributable only to a defined contribution plan and not a defined benefit plan. The maximum amount of a member's supplemental contributions shall be based on the member's annual compensation, as defined in Section 414(s) of the Internal Revenue Code, and shall be subject to the limitations imposed by Sections 401(a)(17), 401(m), and 415 of the Internal Revenue Code, and any other applicable federal tax code requirements for maintaining the qualified plan status of this system. The cost of administering this article shall be paid solely by member accumulated supplemental contributions. The state shall not make any employer contributions or member supplemental contributions on behalf of a participating member.

(b) For purposes of this article "supplemental contributions" shall mean contributions made by members in addition to their contributions required under Article 5 (commencing with Section 9357) and "accumulated supplemental contributions" shall mean the sum of all supplemental contributions standing to the credit of a member's individual account and any earnings thereon, less administrative costs.

(c) The board shall determine when this article shall be applicable to members.

9382. Accumulated supplemental contributions shall not be distributed to a participating member or his or her beneficiary, either by lump-sum or periodic payment, until the member has separated from membership in this system or has retired.

9383. A member may at any time, in writing, authorize the board to apply any or all accumulated supplemental contributions as

payment of any contributions required of the member or payable at the member's option pursuant to any provision of this chapter, except the contributions required in Article 5 (commencing with Section 9357). Any distribution made pursuant to this section shall comply with applicable Internal Revenue Service rules and regulations.

9384. Notwithstanding the rate of interest payable on member contributions pursuant to any other provision of this part, the board, after deducting the costs of administering this article, shall credit the accumulated supplemental contributions of a member with interest at the net earnings rate compounded at each June 30.

9385. (a) Upon application for retirement, a member who makes supplemental contributions pursuant to this article may elect the distribution of his or her accumulated supplemental contributions in a lump sum, or in a periodic manner approved by the board. Any distribution made shall be in compliance with minimum distribution rules under Section 401(a)(9) of the Internal Revenue Code. The board shall furnish information concerning its approved manner of distribution.

(b) The distribution of accumulated supplemental contributions to a participating member or his or her beneficiary shall be in a manner approved by the board and subject to the limitations imposed by Sections 401(a)(9) and 401(a)(31) of the Internal Revenue Code and any other applicable federal tax code requirements for maintaining the qualified plan status of this system.

SEC. 3. Section 20633 of the Government Code is repealed.

SEC. 4. Section 20634 of the Government Code is repealed.

SEC. 5. Section 20635 of the Government Code is repealed.

SEC. 6. Chapter 5.5 (commencing with Section 20700) is added to Part 3 of Division 5 of Title 2 of the Government Code, to read:

CHAPTER 5.5. SUPPLEMENTAL CONTRIBUTIONS PROGRAM

20700. (a) There is a member supplemental contributions program established within this system which is intended to be a defined contribution plan within the meaning of Section 414(i) of the Internal Revenue Code. The program shall operate solely at the option and expense of the members who elect to participate and shall in no way obligate employers for lifetime annuity payments to participating employees or their beneficiaries. Any distribution arising from participation in this program shall be funded only by accumulated supplemental contributions.

(b) This chapter does not establish a new program, but rather recodifies, further defines, and retitles the additional contributions program established by Chapter 1321 of the Statutes of 1992 and Chapter 174 of the Statutes of 1993, to ensure full compliance with applicable Internal Revenue Service rules and regulations.

20701. (a) Any member in the employ of the state, the university, a school employer, or a contracting agency may elect, in

a manner prescribed by the board, to participate in the program. A participating member may make supplemental contributions to the program, in excess of normal contributions, for the purpose of supplementing retirement benefits under this system. The supplemental contributions shall be made solely at the option and expense of the member and shall be attributable only to a defined contribution plan and not a defined benefit plan. The maximum amount of a member's supplemental contributions shall be based on the member's annual compensation, as defined in Section 414(s) of the Internal Revenue Code, and shall be subject to the limitations imposed by Sections 401(a)(17), 401(m), and 415 of the Internal Revenue Code and any other applicable federal tax code requirements for maintaining the qualified plan status of this system. The cost of administering this chapter shall be paid solely by member accumulated supplemental contributions. The employer shall not make any employer contributions or member supplemental contributions on behalf of a participating member.

(b) For purposes of this chapter, "supplemental contributions" shall mean contributions made by members in addition to their normal contributions and "accumulated supplemental contributions" shall mean the sum of all supplemental contributions standing to the credit of a member's individual account and any earnings thereon, less administrative costs.

(c) The board shall determine when this chapter shall be applicable to school members and local members.

20702. Accumulated supplemental contributions shall not be distributed to a participating member or his or her beneficiary, either by lump-sum or periodic payment, until the member has separated from membership in this system or has retired.

20703. Notwithstanding any other provision of this part, a member may at any time, in writing, authorize the board to apply any or all accumulated supplemental contributions as payment of any contributions required of the member or payable at the member's option pursuant to any provision of this part, except the normal monthly contributions required in Article 1 (commencing with Section 20600) of Chapter 5. Any distribution made pursuant to this section shall comply with applicable Internal Revenue Service rules and regulations.

20704. Notwithstanding the rate of interest payable on member contributions pursuant to any other provision of this part, the board, after deducting the costs of administering this chapter, shall credit the accumulated supplemental contributions of a member with interest at the net earnings rate compounded at each June 30.

20705. (a) Upon application for retirement, a member who makes supplemental contributions pursuant to this chapter may elect the distribution of his or her accumulated supplemental contributions in a lump sum, or in a periodic manner approved by the board. Any distribution made shall be in compliance with minimum distribution rules under Section 401(a)(9) of the Internal

Revenue Code. The board shall furnish information concerning its approved manner of distribution.

(b) The distribution of accumulated supplemental contributions to a participating member, or his or her beneficiary, shall be in a manner approved by the board and subject to the limitations imposed by Sections 401(a)(9) and 401(a)(31) of the Internal Revenue Code and any other applicable federal tax code requirements for maintaining the qualified plan status of this system.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to permit members to participate in newly created supplemental contributions programs in 1994, it is necessary that this act take effect immediately.

CHAPTER 577

An act to amend Sections 19598 and 19641 of the Business and Professions Code, relating to horseracing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 19598 of the Business and Professions Code is amended to read:

19598. Any person claiming to be entitled to any part of a redistribution from a parimutuel pool operated by a licensee under this chapter, who fails to claim the money due the person prior to the completion of the horseracing meeting at which the pool was formed, may file a claim with the association issuing the person's ticket prior to May 15 of the year immediately following the close of the horseracing meeting.

The funds that were unclaimed within the period specified under this section are designated as "unclaimed tickets" and shall be distributed in accordance with this chapter.

SEC. 2. Section 19641 of the Business and Professions Code is amended to read:

19641. (a) Except as provided in subdivision (b), any redistributable money in a parimutuel pool subject to payment to a claimant pursuant to Section 19598, but not successfully claimed within that period, shall be paid to the board, as follows:

(1) An estimated payment equal to 20 percent of the preceding year's unclaimed redistributable money paid pursuant to this subdivision shall be paid to the board on July 1, October 1, January

1, and April 1, or the next business day thereafter.

(2) On May 30, or the next business day thereafter, of the year following the close of any horseracing meeting, the association shall pay to the board all of the redistributable funds that are owed it pursuant to this subdivision, less any estimated payments made pursuant to paragraph (1).

The money received by the board under this subdivision resulting from thoroughbred, harness, or quarter horse meetings, but excluding the meetings of the California Exposition and State Fair or of a county, district agricultural association, or citrus fruit fair, shall be used by the board to support research on matters pertaining to horseracing and racetrack security, but this money is subject to annual budgetary review by the Legislature. All of the redistributable money received by the board from other meetings shall be paid immediately into the State Treasury to the credit of the General Fund.

(b) One-half of the redistributable money resulting from the thoroughbred, harness, or quarter horse meetings, but excluding the meetings of the California Exposition and State Fair or county, district agricultural association, or citrus fruit fair meetings, shall be distributed to a welfare fund established by the horsemen's organization contracting with the association with respect to the conduct of racing meetings for the benefit of horsemen, as follows:

(1) An estimated payment equal to 20 percent of the preceding year's unclaimed redistributable money distributed pursuant to this subdivision shall be distributed to the welfare fund on July 1, October 1, January 1, and April 1, or the next business day thereafter.

(2) On May 30, or the next business day thereafter, of the year following the close of any horseracing meeting, the association shall pay to the welfare fund all of the redistributable funds that are owed it pursuant to this subdivision, less any estimated payments made pursuant to paragraph (1).

The welfare fund shall make an accounting to the board within one calendar year of the receipt of the payment.

(c) Except as provided in subdivision (a) or (b), any remaining redistributable money in a parimutuel pool subject to payment to a claimant pursuant to Section 19598, but not successfully claimed within the period specified in that section, shall be distributed one-half to the board, for the purposes specified and in the manner specified in subdivision (a), and one-half to the welfare fund established by the horsemen's organization described in subdivision (b) in the manner specified in subdivision (b).

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for this act to apply to the 1994 racing season, it is necessary that this act take effect immediately.

CHAPTER 578

An act to amend Section 3059 of the Business and Professions Code, relating to optometry.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 3059 of the Business and Professions Code is amended to read:

3059. (a) It is the intent of the Legislature that the public health and safety would be served by requiring all holders of licenses to practice optometry granted under this chapter to continue their education after receiving their licenses. The board shall adopt regulations which require, as a condition to the renewal thereof, that all holders of licenses submit proof satisfactory to the board that they have informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses by pursuing one or more courses of study satisfactory to the board or by other means deemed equivalent by the board.

(b) The board may, in accordance with the intent of this section, make exceptions from continuing education requirements for reasons of health, military service, or other good cause.

(c) If for good cause compliance cannot be met for the current year, the board may grant exemption of compliance for that year, provided that a plan of future compliance that includes current requirements as well as makeup of previous requirements is approved by the board.

(d) The board may require that proof of compliance with this section be submitted on an annual or biennial basis as determined by the board.

(e) The board may adopt regulations to require licensees to maintain current certification in cardiopulmonary resuscitation. Training required for the granting or renewal of a cardiopulmonary certificate shall not be credited towards the requirements of subdivision (a).

CHAPTER 579

An act to amend Section 1266 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 1266 of the Health and Safety Code is amended to read:

1266. (a) Each new and renewal application for a license for the health facilities listed below shall be accompanied by an annual fee as set forth below.

(1) The annual fee for a general acute care hospital, acute psychiatric hospital, special hospital, and chemical dependency recovery hospital, based on the number of licensed beds, is as follows:

1–49 beds	$460 plus $8 per bed
50–99 beds	$850 plus $8 per bed
100 or more beds	$1,175 plus $8 per bed

(2) The annual fee for a skilled nursing facility, intermediate care facility, and intermediate care facility/developmentally disabled, based on the number of licensed beds, is as follows:

1–59 beds	$2,068 plus $26 per bed
60–99 beds	$2,543 plus $26 per bed
100 or more beds	$3,183 plus $26 per bed

(3) The fees provided in this subdivision shall be adjusted, commencing July 1, 1983, as proposed in the state department's 1983–84 fiscal year Health Facility License Fee Report to the Legislature. Commencing July 1, 1984, fees provided in this subdivision shall be adjusted annually, as directed by the Legislature in the annual Budget Act.

(b) (1) By March 17 of each year, the State Department of Health Services shall make available to interested parties upon request information regarding the methodology and calculations used to determine the fee amounts specified in this section, the staffing and systems analysis required under subdivision (e), program costs associated with the licensing provisions of this division, and the actual numerical fee charges to be implemented on June 30 of that year. The methodology and calculations used to determine the fee amounts shall result in fee levels in an amount sufficient to provide revenues equal to the sum of the following:

(A) The General Fund expenditures for the fiscal year ending on June 30 of that year, as specified in the Governor's proposed budget, less license fees estimated to be collected in that fiscal year by the licensing provisions of this division, excluding licensing fees collected

pursuant to this section.

(B) The amount of federal funds budgeted for the fiscal year ending June 30 of that year for the licensing provisions of the division, less federal funds received or credited, or anticipated to be received or credited, during that fiscal year for that purpose.

The methodology for calculating the fee levels shall include an adjustment which takes into consideration the actual amount of license fee revenue collected pursuant to this section for that prior fiscal year.

(2) The information specified in paragraph (1) shall specifically identify federal funds received, but not previously budgeted for, the licensing provisions of this division that are used to offset the amount of General Fund money to be recovered through license fees. The information shall also identify the purpose of federal funds received for any additional activities under the licensing provisions of this division that are not used to offset the amount of General Fund money.

(c) The annual fees determined pursuant to this section shall be waived for any health facility conducted, maintained, or operated by this state or any state department, authority, bureau, commission, or officer, or by the Regents of the University of California, or by a local hospital district, city, county, or city and county.

(d) The department shall, by July 30 of each year, publish a list of actual numerical fee charges as adjusted pursuant to this section. This adjustment of fees and the publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. If the published list of fees is higher than that made available to interested parties pursuant to subdivision (b), the affected health facilities may choose to pay the fee in the amount presented at the public hearing and to defer payment of the additional increment until 60 days after publication of the list of fees pursuant to this subdivision.

(e) Prior to the establishment of the annual fee, the state department shall prepare a staffing and systems analysis to ensure efficient and effective utilization of fees collected, proper allocation of departmental resources to licensing and certification activities, survey schedules, complaint investigations, enforcement and appeal activities, data collection and dissemination, surveyor training, and policy development.

The analysis under this subdivision shall be included in the information made available pursuant to subdivision (b), and shall include all of the following:

(1) The number of surveyors and administrative support personnel devoted to the licensing and certification of health care facilities.

(2) The percentage of time devoted to licensing and certification activities for the various types of health facilities.

(3) The number of facilities receiving full surveys and the

frequency and number of followup visits.

(4) The number and timeliness of complaint investigations.

(5) Data on deficiencies and citations issued, and numbers of citation review conferences and arbitration hearings.

(6) Training courses provided for surveyors.

(7) Other applicable activities of the licensing and certification division.

The analysis shall also include recommendations for administrative changes to streamline and prioritize the survey process, complaint investigations, management information systems, word processing capabilities and effectiveness, consumer information system, and surveyor training.

The annual staffing and systems analysis shall be presented to the Health Care Advisory Committee and the Legislature prior to the establishment and adoption of the annual fee.

(f) The annual fee for a congregate living health facility shall initially, and until adjusted by the Legislature in a Budget Act, be based on the number of licensed beds as follows:

1–3 beds	$ 800
4–6 beds	$1,000
7–10 beds	$1,200
11–15 beds	$1,500
16 or more beds	$1,700

Commencing July 1, 1991, fees provided in this subdivision shall be adjusted annually, as directed by the Legislature in the annual budget.

(g) The annual fee for a pediatric day health and respite care facility, as defined in Section 1760.2, shall initially, and until adjusted by the Legislature in a Budget Act, be based on the number of licensed beds as follows:

1–3 beds or clients	$ 800
4–6 beds or clients	$1,000
7–10 beds or clients	$1,200
11–15 beds or clients	$1,500
16 or more beds or clients	$1,700 plus $50 for each additional bed or client over 16 beds or clients

Commencing July 1, 1993, fees provided in this subdivision shall be adjusted annually, as directed by the Legislature in the annual Budget Act.

(h) The department shall, in consultation with affected provider representatives, develop a specific proposal by July 1, 1995, to do all of the following:

(1) Revise the health facility licensure fee methodologies in a manner that addresses the fee methodology and subsidy issues described in the State Auditor Report Number 93020, Issues 2 and 3.

(2) Ensure the validity and reliability of the data systems used to calculate the license fee.

(3) Address the subsidy of licensing and certification activities regarding health facilities for which the annual license fee is waived.

(4) Develop a licensing and certification special fund into which all fees collected by the state department, for health facility licensing, certification, regulation, and inspection duties, functions, and responsibilities, shall be deposited.

CHAPTER 580

An act to amend Section 65852.2 of, and to add Section 65852.150 to, the Government Code, relating to land use.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 65852.150 is added to the Government Code, to read:

65852.150. The Legislature finds and declares that second units are a valuable form of housing in California. Second units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods. Homeowners who create second units benefit from added income, and an increased sense of security.

It is the intent of the Legislature that any second-unit ordinances adopted by local agencies have the effect of providing for the creation of second units and that provisions in these ordinances relating to matters including unit size, parking, fees and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create second units in zones in which they are authorized by local ordinance.

SEC. 2. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) Any local agency may, by ordinance, provide for the creation of second units in single-family and multifamily residential zones. The ordinance:

(1) May designate areas within the jurisdiction of the local agency where second units may be permitted. The designation of areas may be based on criteria, which may include, but are not limited to, the adequacy of water and sewer services and the impact of second units on traffic flow.

(2) May impose standards on second units which include, but are not limited to, parking, height, setback, lot coverage, architectural review, and maximum size of a unit.

(3) May provide that second units do not exceed the allowable

density for the lot upon which the second unit is located, and that second units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(4) May establish a process for the issuance of a conditional use permit for second units.

(5) Shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) (1) When a local agency which has not adopted an ordinance governing second units in accordance with subdivision (a) or (c) receives its first application on or after July 1, 1983, for a conditional use permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application pursuant to this subdivision unless it adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding Section 65901, every local agency shall grant a special use or a conditional use permit for the creation of a second unit if the second unit complies with all of the following:

(A) The unit is not intended for sale and may be rented.

(B) The lot is zoned for single-family or multifamily use.

(C) The lot contains an existing single-family dwelling.

(D) The second unit is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(E) The increased floor area of an attached second unit shall not exceed 30 percent of the existing living area.

(F) The total area of floor space for a detached second unit shall not exceed 1,200 square feet.

(G) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.

(H) Local building code requirements which apply to detached dwellings, as appropriate.

(I) Approval by the local health officer where a private sewage disposal system is being used, if required.

(2) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(3) This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed second units on lots zoned for residential use which contain an existing single-family dwelling. No additional standards, other than those provided in this subdivision or subdivision (a), shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

(4) No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement this subdivision. Any local agency may amend its zoning ordinance or

general plan to incorporate the policies, procedures, or other provisions applicable to the creation of second units if these provisions are consistent with the limitations of this subdivision.

(5) A second unit which conforms to the requirements of this subdivision shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot. The second units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(c) No local agency shall adopt an ordinance which totally precludes second units within single-family or multifamily zoned areas unless the ordinance contains findings acknowledging that the ordinance may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing second units within single-family and multifamily zoned areas justify adopting the ordinance.

(d) A local agency may establish minimum and maximum unit size requirements for both attached and detached second units. No minimum or maximum size for a second unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings which does not permit at least an efficiency unit to be constructed in compliance with local development standards.

(e) Parking requirements for second units shall not exceed one parking space per unit or per bedroom. Additional parking may be required provided that a finding is made that the additional parking requirements are directly related to the use of the second unit and are consistent with existing neighborhood standards applicable to existing dwellings. Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(f) Fees charged for the construction of second units shall be determined in accordance with Chapter 5 (commencing with Section 66000).

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of second units.

(h) Local agencies shall submit a copy of the ordinances adopted pursuant to subdivision (a) or (c) to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) "Living area," means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county,

whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Second unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. A second unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 581

An act to amend Section 8880.5 of the Government Code, relating to school finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 8880.5 of the Government Code is amended to read:

8880.5. Allocations for education:

The California State Lottery Education Fund is created within the State Treasury, and is continuously appropriated for carrying out the purposes of this chapter. The Controller shall draw warrants on this fund and distribute them quarterly in the following manner, provided that the payments specified in subdivisions (a) to (h), inclusive, shall be equal per capita amounts:

(a) Payments shall be made directly to public school districts, including county superintendents of schools, serving kindergarten

and grades 1 to 12, inclusive, or any part thereof, on the basis of an equal amount for each unit of average daily attendance, as defined by law.

(b) Payments shall also be made directly to public school districts serving community colleges, on the basis of an equal amount for each unit of average daily attendance, as defined by law.

(c) Payments shall also be made directly to the Board of Trustees of the California State University on the basis of an amount for each unit of equivalent full-time enrollment. Funds received by the trustees shall be deposited in and expended from the California State University Lottery Education Fund which is hereby created.

(d) Payments shall also be made directly to the Regents of the University of California on the basis of an amount for each unit of equivalent full-time enrollment.

(e) Payments shall also be made directly to the Board of Directors of the Hastings College of the Law on the basis of an amount for each unit of equivalent full-time enrollment.

(f) Payments shall also be made directly to the California Maritime Academy Board of Governors on the basis of an amount for each unit of equivalent full-time enrollment.

(g) Payments shall also be made directly to the Department of the Youth Authority for educational programs serving kindergarten and grades 1 to 12, inclusive, or any part thereof, on the basis of an equal amount for each unit of average daily attendance, as defined by law.

(h) Payments shall also be made directly to the two California Schools for the Deaf, the California School for the Blind, and the three Diagnostic Schools for Neurologically Handicapped Children, on the basis of an amount for each unit of equivalent full-time enrollment.

(i) Payments shall also be made directly to the State Department of Developmental Services and the State Department of Mental Health for clients with developmental or mental disabilities who are enrolled in state hospital education programs, including developmental centers, on the basis of an equal amount for each unit of average daily attendance, as defined by law.

(j) No Budget Act or other statutory provision shall direct that payments for public education made pursuant to this chapter be used for purposes and programs (including workload adjustments and maintenance of the level of service) authorized by Chapters 498, 565, and 1302 of the Statutes of 1983, Chapter 97 or 258 of the Statutes of 1984, or Chapter 1 of the Statutes of 1984, Second Extraordinary Session.

(k) School districts and other agencies receiving funds distributed pursuant to this chapter may at their option utilize funds allocated by this chapter to provide additional funds for those purposes and programs prescribed by subdivision (j) for the purpose of enrichment or expansion.

(*l*) As a condition of receiving any moneys pursuant to subdivision (a) or (b), each district and county superintendent of

schools shall establish a separate account for the receipt and expenditure of those moneys, which account shall be clearly identified as a lottery education account.

It is the intent of this chapter that all funds allocated from the California State Lottery Education Fund shall be used exclusively for the education of pupils and students and no funds shall be spent for acquisition of real property, construction of facilities, financing of research, or any other noninstructional purpose.

SEC. 2. The Legislature finds and declares that Section 1 of this act furthers the purposes of the California State Lottery Act of 1984.

SEC. 3. The amendment made to Section 8800.5 of the Government Code by Section 1 of this act shall be effective for the entire 1994–95 fiscal year and each fiscal year thereafter.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the fiscal stability of two state hospitals that are currently providing educational services to pupils who cannot leave the hospital grounds, and on the recommendation of the Department of Finance, it is necessary for this act to take effect immediately.

CHAPTER 582

An act to add Section 1368.1 to the Health and Safety Code, and to add Sections 10144.1 and 11512.194 to the Insurance Code, relating to health coverage.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 1368.1 is added to the Health and Safety Code, to read:

1368.1. (a) A plan that denies coverage to an enrollee with a terminal illness, which for the purposes of this section refers to an incurable or irreversible condition that has a high probability of causing death within one year or less, for treatment, services, or supplies deemed experimental, as recommended by a participating plan provider, shall provide to the enrollee within five business days all of the following information:

(1) A statement setting forth the specific medical and scientific reasons for denying coverage.

(2) A description of alternative treatment, services, or supplies covered by the plan, if any. Compliance with this subdivision by a plan shall not be construed to mean that the plan is engaging in the

unlawful practice of medicine.

(3) Copies of the plan's grievance procedures or complaint form, or both. The complaint form shall provide an opportunity for the enrollee to request a conference as part of the plan's grievance system provided under Section 1368.

(b) Upon receiving a complaint form requesting a conference pursuant to paragraph (3) of subdivision (a), the plan shall provide the enrollee, within 30 calendar days, an opportunity to attend a conference, to review the information provided to the enrollee pursuant to paragraphs (1) and (2) of subdivision (a), conducted by a plan representative having authority to determine the disposition of the complaint. The plan shall allow attendance, in person, at the conference, by an enrollee, a designee of the enrollee, or both, or, if the enrollee is a minor or incompetent, the parent, guardian, or conservator of the enrollee, as appropriate. However, the conference required by this subdivision shall be held within five business days if the treating participating physician determines, after consultation with the health plan medical director or his or her designee, based on standard medical practice, that the effectiveness of either the proposed treatment, services, or supplies or any alternative treatment, services, or supplies covered by the plan, would be materially reduced if not provided at the earliest possible date.

(c) Nothing in this section shall limit the responsibilities, rights, or authority provided in Sections 1370 and 1370.1.

SEC. 2. Section 10144.1 is added to the Insurance Code, to read:

10144.1. A disability insurer that denies coverage for an experimental medical procedure or plan of treatment for a claimant with a terminal illness, which for the purposes of this section refers to an incurable or irreversible condition that has a high probability of causing death within one year or less, under a disability insurance policy that includes hospital, medical, or surgical coverage issued in this state shall provide written notification directly to the claimant or representative, which shall include all of the following:

(a) The specific medical and scientific reasons for the denial and specific references to pertinent policy provisions upon which the denial is based.

(b) A description of the alternative medical procedures or treatments covered by the policy, if any. Compliance with this subdivision by an insurer shall not be construed to mean that the insurer is engaging in the unlawful practice of medicine.

(c) A description of the process by which the claimant or representative may exercise his or her right to appeal the denial and obtain and participate in a review of the information provided to the claimant or representative pursuant to subdivisions (a) and (b). The review shall not be limited to written communication and shall be provided by the appropriate named fiduciary or his or her designee rendering the decision. The review shall be provided to the claimant within 30 calendar days following the receipt of the request for review. However, the review required by this section shall be held

within five business days if the treating physician determines, in consultation with the medical director of the insurer, based on standard medical practice, that the effectiveness of either the proposed treatment, services, or supplies or any alternative treatment, services, or supplies covered by the policy, would be materially reduced if not provided at the earliest possible date.

SEC. 3. Section 11512.194 is added to the Insurance Code, to read:

11512.194. A nonprofit hospital service plan that denies coverage for an experimental medical procedure or plan of treatment for a claimant with a terminal illness, which for the purposes of this section refers to an incurable or irreversible condition that has a high probability of causing death within one year or less, shall provide written notification directly to the claimant or representative, which shall include the specific reasons for the denial and specific references to pertinent plan provisions upon which the denial is based. The notification shall also include a description of the process by which the claimant or representative may exercise his or her right to appeal the denial and obtain and participate in a full and fair review of the denial by the appropriate named fiduciary rendering the decision.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 583

An act to amend Sections 8685 and 8686 of the Government Code, relating to disaster relief, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 8685 of the Government Code is amended to read:

8685. From any money appropriated for that purpose, and subject to the conditions specified in this article, the Director of Emergency Services shall allocate funds to meet the cost of any one or more projects as defined in Section 8680.4. Applications by school

districts shall be submitted to the Superintendent of Public Instruction for review and approval, in accordance with instructions or regulations developed by the Office of Emergency Services, prior to the allocation of funds by the Director of Emergency Services.

Moneys appropriated for the purposes of this chapter may be used to provide financial assistance for the following local agency and state costs:

(a) Local agency personnel costs eligible for funding or reimbursement under Part 206 (commencing with Section 206.1) of Title 44 of the Code of Federal Regulations, equipment costs, and the cost of supplies and materials used during disaster response activities, incurred as a result of a state of emergency proclaimed by the Governor, excluding the normal hourly wage costs of regularly assigned emergency services and public safety personnel.

(b) To repair, restore, reconstruct, or replace facilities belonging to local agencies damaged as a result of natural disasters as defined in Section 8680.3.

(c) Matching fund assistance for cost sharing required under federal public assistance programs.

(d) Indirect costs defined as eligible by the Office of Emergency Services and in accordance with the federal Office of Management and Budget Circular No. A-87, or its successors, and any other assistance deemed necessary by the Director of Emergency Services.

(e) Necessary and required site preparation costs for mobilehomes, travel trailers, and other manufactured housing units provided by the federal temporary housing assistance program operated by the Federal Emergency Management Agency.

SEC. 2. Section 8686 of the Government Code is amended to read:

8686. (a) For any eligible project, the state share shall amount to no more than 75 percent of total state eligible costs.

(b) Notwithstanding subdivision (a), the state share shall be up to 100 percent of total state eligible costs connected with the following events:

(1) The October 17, 1989, Loma Prieta earthquake.

(2) The October 20, 1991, East Bay fire.

(3) The fires that occurred in southern California from October 1, 1993, to November 30, 1993, inclusive.

(c) The state shall make no allocation for any project application resulting in a state share of less than two thousand five hundred dollars ($2,500) under this section.

SEC. 2.5. Section 8686 of the Government Code is amended to read:

8686. (a) For any eligible project, the state share shall amount to no more than 75 percent of total state eligible costs.

(b) Notwithstanding subdivision (a), the state share shall be up to 100 percent of total state eligible costs connected with the following events:

(1) The October 17, 1989, Loma Prieta earthquake.

(2) The October 20, 1991, East Bay fire.

(3) The fires that occurred in southern California from October 1, 1993, to November 30, 1993, inclusive.

(4) The January 17, 1994, Northridge earthquake.

(c) The state shall make no allocation for any project application resulting in a state share of less than two thousand five hundred dollars ($2,500) under this section.

SEC. 3. The amendments to Section 8685 of the Government Code made pursuant to Section 1 of this act apply with respect to natural disasters occurring on and after the date on which this act becomes effective.

SEC. 4. Matching fund assistance under subdivision (c) of Section 8685 of the Government Code may be provided for the fires occurring in southern California from October 1, 1993, to November 30, 1993, inclusive, in an amount that would have been provided notwithstanding the October 14, 1993, amendments to Part 206 (commencing with Section 206.1) of Title 44 of the Code of Federal Regulations.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 8686 of the Government Code proposed by this bill, AB 3065, and SB 273. It shall only become operative if (1) this bill and AB 3065 or SB 273 or both are enacted and become effective on or before January 1, 1995, (2) this bill and AB 3065 or SB 273 or both amends Section 8686 of the Government Code, and (3) this bill is enacted after AB 3065 or SB 273, in which case Section 8686 of the Government Code, as amended by AB 3065 or SB 273, as the case may be, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative, and Section 2, of this bill shall not become operative.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Local governments incurred substantial expense in combating fires during the southern California firestorm that occurred in October and November 1993. In order to ensure that necessary relief is forthcoming prior to the end of this fiscal year, it is necessary for this act to take effect immediately.

CHAPTER 584

An act to add Section 1651.2 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 1651.2 is added to the Vehicle Code, to read:

1651.2. Whenever in the judgment of the department, any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, an offense against Division 5 (commencing with Section 11100) by engaging in any act subject to license requirements without having obtained a license, the department may apply to the appropriate court for an order enjoining the acts or practices, and, upon showing by the department that the person has engaged, or is about to engage, in any of those acts or practices, an injunction, restraining order, or other order that may be appropriate shall be granted by the court, including the costs incurred by the department in obtaining the order.

CHAPTER 585

An act to amend Sections 8502, 8801.3, 8801.5, 8814, and 8814.5 of, and to add Section 8514 to, the Family Code, relating to family law.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 8502 of the Family Code is amended to read:

8502. (a) "Adoption service provider" means any of the following:

(1) A licensed private adoption agency.

(2) An individual who has presented satisfactory evidence to the department that he or she is a licensed clinical social worker who also has a minimum of five years of experience providing professional social work services while employed by a licensed California adoption agency or the department.

(3) In a state other than California, an adoption agency licensed or otherwise approved under the laws of that state, or an individual who is licensed or otherwise certified as a clinical social worker under the laws of that state.

(b) If, in the case of a birth parent located in California, at least three adoption service providers are not reasonably available, or, in

the case of a birth parent located outside of California who has contacted at least three potential adoption service providers and been unsuccessful in obtaining the services of an adoption service provider who is reasonably available and willing to provide services, independent legal counsel for the birth parent may serve as an adoption service provider pursuant to subdivision (e) of Section 8801.5. "Reasonably available" means that an adoption service provider is all of the following:

(1) Available within five days for an advisement of rights pursuant to Section 8801.5, or within 24 hours for the signing of the placement agreement pursuant to paragraph (3) of subdivision (b) of Section 8801.3.

(2) Within 100 miles of the birth mother.

(3) Available for a cost not exceeding five hundred dollars ($500) to make an advisement of rights and to witness the signing of the placement agreement.

(c) Where an attorney acts as an adoption service provider, the fee to make an advisement of rights and to witness the signing of the placement agreement shall not exceed five hundred dollars ($500).

(d) This section shall become operative on January 1, 1995.

SEC. 2. Section 8514 is added to the Family Code, to read:

8514. "Days" means calendar days, unless otherwise specified.

SEC. 3. Section 8801.3 of the Family Code is amended to read:

8801.3. A child shall not be considered to have been placed for adoption unless each of the following is true:

(a) Each birth parent placing the child for adoption has been advised of his or her rights, and if desired, has been counseled pursuant to Section 8801.5.

(b) The adoption service provider, each prospective adoptive parent, and each birth parent placing the child have signed an adoption placement agreement on a form prescribed by the department. The signing of the agreement shall satisfy all of the following requirements:

(1) Each birth parent shall have been advised of his or her rights pursuant to Section 8801.5 at least 10 days before signing the agreement, unless the adoption service provider finds exigent circumstances which shall be set forth in the adoption placement agreement.

(2) The agreement may not be signed by either the birth parents or the prospective adoptive parents until the time of discharge of the birth mother from the hospital. However, if the birth mother remains hospitalized for a period longer than the hospitalization of the child, the agreement may be signed by all parties at the time of or after the child's discharge from the hospital but prior to the birth mother's discharge from the hospital if her competency to sign is verified by her attending physician and surgeon before she signs the agreement.

(3) The birth parents and prospective adoptive parents shall sign the agreement in the presence of an adoption service provider.

(4) The adoption service provider who witnesses the signatures shall keep the original of the adoption placement agreement and immediately forward it and supporting documentation as required by the department to the department or delegated county adoption agency.

(5) The child is not deemed to be placed for adoption with the prospective adoptive parents until the adoption placement agreement has been signed and witnessed.

(6) If the birth parent is not located in this state, the adoption placement agreement shall be signed before an adoption service provider or a notary or other person authorized to perform notarial acts in the state where the birth parent is located.

(c) The adoption placement agreement form shall include all of the following:

(1) A statement that the birth parent received the advisement of rights and the date upon which it was received.

(2) A statement that the birth parent understands that the placement is for the purpose of adoption and that if the birth parent takes no further action, on the 91st day after signing the adoption placement agreement, the agreement shall become a permanent and irrevocable consent to the adoption.

(3) A statement that the birth parent signs the agreement having personal knowledge of certain facts regarding the prospective adoptive parents as provided in Section 8801.

(4) A statement that the adoptive parents have been informed of the basic health and social history of the birth parents.

(5) A consent to the adoption that may be revoked as provided by Section 8814.5.

(d) The adoption placement agreement shall also meet the requirements of the Interstate Compact on the Placement of Children in Section 7901.

(e) This section shall become operative on January 1, 1995.

SEC. 4. Section 8801.5 of the Family Code is amended to read:

8801.5. (a) Each birth parent placing a child for adoption shall be advised of his or her rights by an adoption service provider.

(b) The birth parent shall be advised of his or her rights in a face-to-face meeting in which the birth parent may ask questions and have questions answered, as provided by Section 8801.3.

(c) The department shall prescribe the format and process for advising birth parents of their rights, the content of which shall include, but not be limited to, the following:

(1) The alternatives to adoption.

(2) The alternative types of adoption, including a description of the full procedures and timeframes involved in each type.

(3) The full rights and responsibilities of the birth parent with respect to adoption, including the need to keep the department informed of his or her current address in case of a medical emergency requiring contact and of providing a full health history.

(4) The right to separate legal counsel paid for by the prospective

adoptive parents upon the request of the birth parent, as provided for by Section 8800.

(5) The right to a minimum of three separate counseling sessions, each to be held on different days, to be paid for by the prospective adoptive parents upon the request of the birth parents, as provided for by subdivision (d).

(d) Each person advised pursuant to this section shall be offered at least three separate counseling sessions, to be held on different days. Each counseling session shall be not less than 50 minutes in duration. The counseling may be provided by an adoption service provider or by a licensed psychotherapist, as defined by Section 1010 of the Evidence Code, as elected by the person.

(e) The counselor owes a duty of care to the birth parent being counseled, similar to the duty of care established by a psychotherapist-patient relationship, regardless of who pays the fees of the counselor. No counselor shall have a contractual relationship with the adoptive parents, an attorney for the adoptive parents, or any other individual or an organization performing any type of services for the adoptive parents and for which the adoptive parents are paying a fee, except as relates to payment of the birth parents' fee.

(f) The advisement and counseling fees shall be paid by the prospective adoptive parents at the request of the birth parent.

(g) Failure to fulfill the duties specified in this section shall not be construed as a basis for setting aside the consent or the adoption, but may give rise to a cause of action for malpractice or negligence against those professionals or agencies serving as adoption service providers that are responsible for fulfilling the duties.

(h) This section shall become operative on January 1, 1995.

SEC. 5. Section 8814 of the Family Code, as added by Chapter 758 of the Statutes of 1993, is amended to read:

8814. (a) The consent of the birth parent or parents who did not place the child for adoption as described in Section 8801.3 to the adoption shall be signed in the presence of an agent of the department or of a delegated county adoption agency on a form prescribed by the department. The consent shall be filed with the clerk of the appropriate superior court.

(b) The consent described in subdivision (a), when reciting that the person giving it is entitled to the sole custody of the child and when acknowledged before that agent, is prima facie evidence of the right of the person making it to the sole custody of the child and that person's sole right to consent.

(c) If the birth parent described in subdivision (a) is located outside this state for an extended period of time unrelated to the adoption at the time of signing the consent, the consent may be signed before a notary or other person authorized to perform notarial acts, and in that case the consent of the department or of the delegated county adoption agency is also necessary.

(d) A birth parent who is a minor has the right to sign a consent

for the adoption of the birth parent's child and the consent is not subject to revocation by reason of minority.

(e) This section shall become operative on January 1, 1995.

SEC. 6. Section 8814.5 of the Family Code is amended to read:

8814.5. (a) After a consent to the adoption is signed by the birth parent or parents pursuant to Section 8801.3 or 8814, the birth parent or parents signing the consent shall have 90 days to take one of the following actions:

(1) Sign and deliver to the department or delegated county adoption agency a written statement revoking the consent and requesting the child to be returned to the birth parent or parents.

(2) Sign a waiver of the right to revoke consent on a form prescribed by the department in the presence of a representative of the department or delegated county adoption agency. If neither a representative of the department nor a representative of a delegated county adoption agency is reasonably available, the waiver of the right to revoke consent may be signed in the presence of a judicial officer of a court of record if the birth parent is represented by independent legal counsel. "Reasonably available" means that a representative from either the department or the delegated county adoption agency is available to accept the signing of the waiver within 10 days and is within 100 miles of the location of the birth mother.

The waiver of the right to revoke consent may not be signed until an interview has been completed by the department or delegated county adoption agency unless the waiver of the right to revoke consent is signed in the presence of a judicial officer of a court of record as specified in this section. Within 10 working days of a request made after the department, the delegated county adoption agency, or the court has received a copy of the petition for the adoption and the names and addresses of the persons to be interviewed, the department, the delegated county adoption agency, or the court shall interview, at the department or agency office or the court, any birth parent requesting to be interviewed. However, the interview, and the witnessing of the signing of a waiver of the right to revoke consent of a birth parent residing outside of California or located outside of California for an extended period of time unrelated to the adoption may be conducted in the state where the birth parent is located, by any of the following:

(A) A representative of a public adoption agency in that state.

(B) A judicial officer in that state where the birth parent is represented by independent legal counsel.

(C) An adoption service provider.

(3) Allow the consent to become a permanent consent on the 91st day after signing.

(b) The consent may not be revoked after a waiver of the right to revoke consent has been signed or after 90 days beginning on the date the consent was signed, whichever occurs first.

(c) This section shall become operative on January 1, 1995.

CHAPTER 586

An act to amend Sections 14803, 18210, 18216, and 18266 of the Financial Code, relating to financial institutions.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 14803 of the Financial Code is amended to read:

14803. (a) No credit union shall pay any commission or compensation for securing members, provided that this provision shall not limit any credit union from using growth in the number of memberships in the credit union as a part of its compensation program for its employees.

(b) Notwithstanding subdivision (a), pursuant to regulations adopted by the commissioner, a credit union may offer an incentive or inducement to individuals who wish to become members of the credit union, or to its employees or members who assist in adding a new member to the credit union.

SEC. 2. Section 18210 of the Financial Code is amended to read:

18210. (a) Except as provided in Sections 18205.5 and 18209 and subject to subdivisions (b) and (d), an industrial loan company shall not make any loan or purchase or discount any note secured primarily by real property unless the loan or other obligation is repayable in substantially equal weekly, semimonthly, monthly, or quarterly installments during its term, which shall not exceed 30 years and 30 days from the date the loan or other obligation is made or acquired by the company. Equal installment requirements shall not apply to adjustable or variable rate loans or obligations made or purchased by the industrial loan company in accordance with Title VIII of the Garn-St. Germaine Depository Institutions Act of 1982 and any applicable regulations, guidelines, and policies adopted thereunder. However, an industrial loan company may make loans secured by first trust deeds on real property containing single family, or one to four residential, units provided that the repayment period for each loan does not exceed 40 years and 30 days from the date the loan is made by the company. All loans with repayment periods in excess of 30 years and 30 days shall not exceed in the aggregate 5 percent of all outstanding loans and obligations of the company.

(b) Any consumer loan or any purchase or discount of any consumer obligation having a term in excess of three years from the date the loan or other obligation is made or acquired by the company shall be secured solely by real property or solely by personal property. However, if the original principal amount of the consumer loan or obligation is twenty thousand dollars ($20,000) or more, then the loan or obligation shall be secured solely by real property or

solely by personal property, or by both real property and personal property. All loans and obligations made and purchased pursuant to this subdivision shall be repayable in installments and within a term not to exceed the limitations set forth in subdivision (a), except that consumer loans or obligations secured solely by personal property shall have a term not to exceed the term provided for in Section 18205 and except as otherwise may be provided for in Sections 18207, 18208, and 18209. The equal installment requirements set forth in subdivision (a) shall not apply to loans or obligations made or purchased by the industrial loan company in accordance with Title VIII of the Garn-St. Germaine Depository Institutions Act of 1982 and any applicable regulations, guidelines, and policies adopted thereunder.

(c) Notwithstanding any other provision of this division, an industrial loan company may make loans and acquire or discount obligations having a term in excess of seven years secured primarily by real property pursuant to subdivision (a) or secured solely or primarily by real property pursuant to subdivision (b), provided that all of the loans and obligations in excess of seven years shall not in the aggregate exceed 70 percent of the industrial loan company's total assets. For purposes of this subdivision, the following loans and obligations are considered as having a term of less than seven years:

(1) Any loan or obligation guaranteed or insured by any federal or state agency.

(2) Any loans or obligations that meet all of the following conditions:

(A) Are for the purchase or refinance of single or multifamily residential property.

(B) Are saleable in the secondary market. "Saleable in the secondary market" for purposes of this subparagraph means saleable to qualified institutional buyers, as evidenced by irrevocable commitments to buy by those qualified institutional buyers.

(C) Are owned by the industrial loan company for 90 days or less.

(d) In order to ensure the safety and soundness of industrial loan companies and to avoid an unreasonable concentration of loans and obligations that could result in balloon payments, all loans and obligations specified in subdivision (c) with a term in excess of 15 years and 30 days shall be repaid in substantially equal weekly, semimonthly, monthly, or quarterly installments during their term.

SEC. 3. Section 18216 of the Financial Code is amended to read:

18216. Notwithstanding Section 18211, an appraisal fee may be charged by an industrial loan company in connection with an application or request for any loan having a face amount in excess of five thousand dollars ($5,000) that is secured primarily by real property whether or not the loan is made. That fee shall not exceed the actual cost of the appraisal or 1 percent of the face amount of the loan, whichever is less. The appraisal shall be rendered to the industrial loan company in writing by a qualified appraiser approved pursuant to Title XI of the Financial Institutions Reform, Recovery,

and Enforcement Act of 1989, Public Law 101-73, and any applicable regulations, guidelines, and policies adopted thereunder. Only one fee for appraising the same real property made in connection with the same borrower may be collected in any 12-month period. The fee is not included in computing the maximum charges that may be made under this division.

SEC. 4. Section 18266 of the Financial Code is amended to read:

18266. (a) Except as set forth in subdivisions (b) and (c), any loan or obligation made or acquired by an industrial loan company that has investment certificates outstanding that is secured primarily by real property and has an outstanding principal balance of ten thousand dollars ($10,000) or more shall be secured by real property or personal property having combined a fair market value at the time the loan or other obligation is made or acquired of at least 115 percent of the principal amount owing on the loan or obligation and on prior encumbrances, except nondelinquent tax liens, secured by the same real property. Fair market value of the real property for purposes of this section shall be determined by a real property appraiser who meets the qualifications established pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, and any applicable regulations, guidelines, or policies thereunder.

(b) Subdivision (a) does not apply to:

(1) Any loan guaranteed in whole or in part by the Administrator of Veterans Affairs pursuant to the Servicemen's Readjustment Act of 1944 or any act of Congress supplementary or amendatory thereof.

(2) Any loan insured by the Federal Housing Administration pursuant to the National Housing Act or any act of Congress supplementary or amendatory thereof.

(c) Any loan made by an industrial loan company to facilitate the sale of real property owned by the industrial loan company resulting from foreclosure or receipt of a deed in lieu of foreclosure may be secured by real property having a fair market value of less that 115 percent of the principal amount owing on the loan made under this subdivision, provided the loan shall be subject to all other provisions of subdivision (a) and to any requirements the commissioner may impose by rule or order.

(d) Any loan or obligation made or acquired by an industrial loan company that has investment certificates outstanding that is secured solely by motor vehicles or other personal property shall be secured by that property having a fair market value at the time the loan or other obligation is made or acquired of at least 100 percent of the principal amount owing on the loan or obligation. The personal property held as security shall be of a class or kind that has been declared eligible by regulation of the commissioner.

CHAPTER 587

An act to amend Sections 1183.5, 2924g, and 3154 of the Civil Code, to amend Sections 116.570, 116.780, 391, 411.20, 484.050, 527, 527.6, 664.6, 1161.2, 1281.6, and 1513.5 of the Code of Civil Procedure, to amend Section 952 of the Evidence Code, and to amend Sections 27287 and 68620 of the Government Code, relating to courts.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 1183.5 of the Civil Code is amended to read:

1183.5. Any officer on active duty or performing inactive-duty training in the armed forces having the general powers of a notary public pursuant to Section 936 or 1044a of Title 10 of the United States Code (Public Law 90-632 and 101-510) and any successor statutes may perform all notarial acts for any person serving in the armed forces of the United States, wherever he or she may be, or for any spouse of a person serving in the armed forces, wherever he or she may be, or for any person eligible for legal assistance under laws and regulations of the United States, wherever he or she may be, for any person serving with, employed by, or accompanying such armed forces outside the United States and outside the Canal Zone, Puerto Rico, Guam and the Virgin Islands, and any person subject to the Uniform Code of Military Justice outside of the United States.

Any instrument acknowledged by any such officer or any oath or affirmation made before such officer shall not be rendered invalid by the failure to state therein the place of execution or acknowledgment. No seal or authentication of the officer's certificate of acknowledgment or of any jurat signed by him or her shall be required but the officer taking the acknowledgment shall endorse thereon or attach thereto a certificate substantially in a form authorized by the laws of this state or in the following form:

On this the _____ day of _____, 19__, before me _____, the undersigned officer, personally appeared _____ known to me (or satisfactorily proven) to be (a) serving in the armed forces of the United States, (b) a spouse of a person serving in the armed forces of the United States, or (c) a person serving with, employed by, or accompanying the armed forces of the United States outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands, and to be the person whose name is subscribed to the within instrument and acknowledged that he or she executed the same. And the undersigned does further certify that he or she is at the date of this certificate a commissioned officer of the armed forces of the United States having the general powers of a notary public under the provisions of Section 936 or 1044a of Title 10 of the United

States Code (Public Law 90-632 and 101-510).

_____

_____

Signature of officer, rank, branch of service and capacity in which signed.

To any affidavit subscribed and sworn to before such officer there shall be attached a jurat substantially in the following form:

Subscribed and sworn to before me on this _____ day of _____, 19__.

_____

_____

Signature of officer, rank, branch of service and capacity in which signed.

The recitals contained in any such certificate or jurat shall be prima facie evidence of the truth thereof, and any certificate of acknowledgment, oath or affirmation purporting to have been made by any commissioned officer of the Army, Air Force, Navy, Marine Corps or Coast Guard shall, notwithstanding the omission of any specific recitals therein, constitute presumptive evidence of the existence of the facts necessary to authorize such acknowledgment, oath or affirmation to be taken by the certifying officer pursuant to this section.

SEC. 1.2. Section 2924g of the Civil Code is amended to read:

2924g. (a) All sales of property under the power of sale contained in any deed of trust or mortgage shall be held in the county where the property or some part thereof is situated, and shall be made at auction, to the highest bidder, between the hours of 9 a.m. and 5 p.m. on any business day, Monday through Friday.

The sale shall commence at the time and location specified in the notice of sale. Any postponement shall be announced at the time and location specified in the notice of sale for commencement of the sale or pursuant to paragraph (1) of subdivision (c).

If the sale of more than one parcel of real property has been scheduled for the same time and location by the same trustee, (1) any postponement of any of the sales shall be announced at the time published in the notice of sale, (2) the first sale shall commence at the time published in the notice of sale or immediately after the announcement of any postponement, and (3) each subsequent sale shall take place as soon as possible after the preceding sale has been completed.

(b) When the property consists of several known lots or parcels they shall be sold separately unless the deed of trust or mortgage provides otherwise. When a portion of the property is claimed by a third person, who requires it to be sold separately, the portion subject to the claim may be thus sold. The trustor, if present at the sale, may also, unless the deed of trust or mortgage otherwise

provides, direct the order in which property shall be sold, when the property consists of several known lots or parcels which may be sold to advantage separately, and the trustee shall follow that direction. After sufficient property has been sold to satisfy the indebtedness no more can be sold.

If the property under power of sale is in two or more counties the public auction sale of all of the property under the power of sale may take place in any one of the counties where the property or a portion thereof is located.

(c) (1) There may be a postponement of the sale proceedings at any time prior to the completion of the sale at the discretion of the trustee, or upon instruction by the beneficiary to the trustee that the sale proceedings be postponed.

There may be a maximum of three postponements of the sale proceedings pursuant to this subdivision. In the event that the sale proceedings are postponed more than three times, the scheduling of any further sale proceedings shall be preceded by the giving of a new notice of sale in the manner prescribed by Section 2924f.

(2) The trustee shall postpone the sale upon the order of any court of competent jurisdiction, or where stayed by operation of law, or by the mutual agreement, whether oral or in writing, of any trustor and any beneficiary or any mortgagor and any mortgagee. Any postponement pursuant to this paragraph shall not be a postponement for purposes of determining the maximum number of postponements permitted pursuant to this subdivision nor shall a postponement resulting from the prohibition upon a sale within seven days from the expiration of an injunction, restraining order, or stay as provided in subdivision (d) be deemed a postponement for purposes of this subdivision. In addition, one postponement by the trustee based upon a reasonable belief that a petition for bankruptcy has been filed shall not be a postponement for purposes of determining the maximum number of postponements permitted pursuant to this subdivision.

(d) The notice of each postponement and the reason therefor shall be given by public declaration by the trustee at the time and place last appointed for sale. A public declaration of postponement shall also set forth the new date, time, and place of sale and the place of sale shall be the same place as originally fixed by the trustee for the sale. No other notice of postponement need be given. However, the sale shall be conducted no sooner than seven days after the earlier of (1) dismissal of the action or (2) expiration or termination of the injunction, restraining order, or stay (which required postponement of the sale), whether by entry of an order by a court of competent jurisdiction, operation of law, or otherwise, unless the injunction, restraining order, or subsequent order expressly directs the conduct of the sale within that seven-day period. If the sale had been scheduled to occur, but this subdivision precludes its conduct during that seven-day period, a new notice of postponement shall be given if the sale had been scheduled to occur during that seven-day

period. The trustee shall maintain records of each postponement and the reason therefor.

SEC. 1.4. Section 3154 of the Civil Code is amended to read:

3154. (a) At any time after the expiration of the time period specified by Section 3144 with regard to the period during which property is bound by a lien after recordation of a claim of lien, where no action has been brought to enforce such lien, the owner of the property or the owner of any interest therein may petition the proper court for a decree to release the property from the lien.

(b) The petition shall be verified and shall allege all of the following:

(1) The date of recordation of the claim of lien.

(2) The legal description of the property affected by such claim of lien.

(3) That no action has been filed to foreclose the lien, or that no extension of credit has been recorded, and that the time period during which suit can be brought to foreclose the lien has expired.

(4) That the lien claimant is unable or unwilling to execute a release of the lien or cannot with reasonable diligence be found.

(5) That the owner of the property or interest in the property has not filed for relief under any law governing bankrupts, and that there exists no other restraint to prevent the lien claimant from filing to foreclose his or her lien. A certified copy of the claim of lien shall be attached to the petition. The petition shall be deemed controverted by the lien claimant.

(c) Upon the filing of the petition, and before any further proceedings are had, the clerk, or if there is no clerk, the judge shall set a date for the hearing not more that 30 days following the filing of the petition. The court may continue the hearing beyond the 30-day period, but good cause shall be shown for any continuance.

(d) A copy of the petition and the notice setting the date for the hearing shall be served upon the lien claimant at least 10 days prior to the date set for hearing, in the manner in which a summons is required to be served, or by certified or registered mail, postage prepaid, return receipt requested, addressed to the lien claimant at the claimant's address as shown: (1) on the preliminary 20-day notice served by the claimant pursuant to Section 3097, (2) in the records of the registrar of contractors, (3) on the contract on which the lien is based, or (4) on the claim of lien itself. When service is made by mail as provided in this section, service is complete on the fifth day following the day of the deposit of such mail. No decree shall issue in favor of the petitioner unless the petitioner proves that service of the petition and the order fixing the date for hearing was made in compliance with this subdivision. The issue of compliance with this subdivision shall be deemed controverted by the lien claimant.

(e) In the event judgment is rendered in favor of the petitioner, the decree shall indicate all of the following:

(1) The date the lien was recorded.

(2) The county and city, if any, in which the lien was recorded.

(3) The book and page of the place in the official records where the lien is recorded.

(4) The legal description of the property affected. Upon the recordation of a certified copy of the decree, the property described in the decree shall be released from the lien.

(f) The prevailing party shall be entitled to attorneys' fees not to exceed one thousand dollars ($1,000).

(g) Nothing in this section shall be construed to bar any other cause of action or claim for relief by the owner of the property or an interest in the property, nor shall a decree canceling a claimant's lien bar the lien claimant from bringing any other cause of action or claim for relief, other than an action foreclosing such lien. However, no other action or claim shall be joined with the claim for relief established by this section.

(h) The provisions of Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure shall not apply to causes commenced pursuant to this section.

SEC. 2. Section 116.570 of the Code of Civil Procedure is amended to read:

116.570. (a) Any party may submit a written request for postponement of a hearing date.

(1) The written request may be made either by letter or on a form adopted or approved by the Judicial Council.

(2) On the date of making the written request, the requesting party shall mail or personally deliver a copy to each of the other parties to the action.

(3) If the court finds that the interests of justice would be served by postponing the hearing, the court shall postpone the hearing, and shall notify all parties by mail of the new hearing date, time, and place.

(4) The court shall provide a prompt response by mail to any person making a written request for postponement of a hearing date under this subdivision.

(b) If service of the claim and order upon the defendant is not completed within the number of days before the hearing date required by subdivision (b) of Section 116.340, and the defendant has not personally appeared and has not requested a postponement, the court shall postpone the hearing for at least 15 days. If a postponement is ordered under this subdivision, the clerk shall promptly notify all parties by mail of the new hearing date, time, and place.

(c) Nothing in this section limits the inherent power of the court to order postponements of hearings in appropriate circumstances.

(d) A fee of ten dollars ($10) shall be charged and collected for the filing of a request for postponement and rescheduling of a hearing date after service has been made upon the defendant.

SEC. 3. Section 116.780 of the Code of Civil Procedure is amended to read:

116.780. (a) The judgment of the superior court after a hearing

on appeal is final and not appealable.

(b) Article 6 (commencing with Section 116.610) on judgments of the small claims court applies to judgments of the superior court after a hearing on appeal, except as provided in subdivisions (c) and (d).

(c) For good cause and where necessary to achieve substantial justice between the parties, the superior court may award a party to an appeal reimbursement of (1) attorney's fees actually and reasonably incurred in connection with the appeal, not exceeding one hundred fifty dollars ($150), and (2) actual loss of earnings and expenses of transportation and lodging actually and reasonably incurred in connection with the appeal, not exceeding one hundred fifty dollars ($150).

(d) Upon the expiration of 10 days following the completion of the appeal process, the superior court shall order the appeal and any judgment transferred to the small claims court in which the action was originally filed for purposes of enforcement and other proceedings under Article 8 (commencing with Section 116.810) of this chapter.

SEC. 3.5. Section 391 of the Code of Civil Procedure is amended to read:

391. As used in this title, the following terms have the following meanings:

(a) "Litigation" means any civil action or proceeding, commenced, maintained or pending in any state or federal court.

(b) "Vexatious litigant" means a person who does any of the following:

(1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.

(2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

(c) "Security" means an undertaking to assure payment, to the

party for whose benefit the undertaking is required to be furnished, of the party's reasonable expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant.

(d) "Plaintiff" means the person who commences, institutes or maintains a litigation or causes it to be commenced, instituted or maintained, including an attorney at law acting in propria persona.

(e) "Defendant" means a person (including corporation, association, partnership and firm or governmental entity) against whom a litigation is brought or maintained or sought to be brought or maintained.

SEC. 3.7. Section 411.20 of the Code of Civil Procedure is amended to read:

411.20. (a) If the clerk accepts for filing a complaint or other first paper, or any subsequent filing, and payment is made by check which is later returned without payment, the clerk shall, by mail, notify the party tendering the check that he or she has 20 days from the date of mailing of the notice within which to pay the fee, except as provided in subdivision (d), either by cash or by certified check. The clerk's certificate as to the mailing of notice pursuant to this section establishes a rebuttable presumption that the fees were not paid. This presumption is a presumption affecting the burden of producing evidence.

(b) If, after the 20-day period following the mailing of notice, the party tendering a check that is returned without payment has not paid the fee either by cash or certified check, the clerk shall void the filing. Any filing voided by this section can be disposed of without microfilming immediately after the 20 days have elapsed.

(c) If an adverse party files a pleading in response to a complaint, paper or filing referred to in subdivision (a), together with a filing fee, and the original filing is voided pursuant to subdivision (b), the adverse party's filing is not required, and the adverse party's filing fee shall be refunded upon request. If an adverse party tenders a check that is returned without payment, the procedures in subdivisions (a) and (b) shall apply.

(d) If any trial or other hearing is scheduled to be heard prior to the expiration of the 20-day period provided for in subdivision (a), the fee shall be paid prior to the trial or hearing. Failure of the party to pay the fee prior to the trial or hearing date shall cause the court to void the filing and proceed as if it had not been filed.

(e) If the clerk performs a service or issues any document for which a fee is required and payment is made by check which is later returned without payment, the court may order further proceedings suspended as to the party for whom the check was tendered. The clerk shall notify the party tendering the check, by mail, that proceedings have been suspended until the payment of the required fee either by cash or by certified check. The clerk's certificate as to the mailing of notice pursuant to this section establishes a rebuttable

presumption that the fees were not paid. This presumption is a presumption affecting the burden of producing evidence.

SEC. 4. Section 484.050 of the Code of Civil Procedure is amended to read:

484.050. The notice of application and hearing shall inform the defendant of all of the following:

(a) A hearing will be held at a place and at a time, to be specified in the notice, on plaintiff's application for a right to attach order and a writ of attachment.

(b) The order will be issued if the court finds that the plaintiff's claim is probably valid and the other requirements for issuing the order are established. The hearing is not for the purpose of determining whether the claim is actually valid. The determination of the actual validity of the claim will be made in subsequent proceedings in the action and will not be affected by the decisions at the hearing on the application for the order.

(c) The amount to be secured by the attachment is the amount of the defendant's indebtedness claimed by the plaintiff over and above the sum of (1) the amount of any money judgment in favor of the defendant and against the plaintiff that remains unsatisfied and is enforceable, (2) the amount of any indebtedness of the plaintiff claimed by the defendant in a cross-complaint filed in the action if the defendant's claim is one upon which an attachment could be issued, and (3) the amount of any claim of the defendant asserted as a defense in the answer pursuant to Section 431.70 if the defendant's claim is one upon which an attachment could be issued had an action been brought on the claim when it was not barred by the statute of limitations.

(d) If the right to attach order is issued, a writ of attachment will be issued to attach the property described in the plaintiff's application unless the court determines that such property is exempt from attachment or that its value clearly exceeds the amount necessary to satisfy the amount to be secured by the attachment. However, additional writs of attachment may be issued to attach other nonexempt property of the defendant on the basis of the right to attach order.

(e) If the defendant desires to oppose the issuance of the order, the defendant shall file with the court and serve on the plaintiff a notice of opposition and supporting affidavit as required by Section 484.060 not later than five court days prior to the date set for hearing.

(f) If the defendant claims that the personal property described in the application, or a portion thereof, is exempt from attachment, the defendant shall include that claim in the notice of opposition filed and served pursuant to Section 484.060 or file and serve a separate claim of exemption with respect to the property as provided in Section 484.070. If the defendant does not do so, the claim of exemption will be barred in the absence of a showing of a change in circumstances occurring after the expiration of the time for claiming exemptions.

(g) The defendant may obtain a determination at the hearing whether real or personal property not described in the application or real property described in the application is exempt from attachment by including the claim in the notice of opposition filed and served pursuant to Section 484.060 or by filing and serving a separate claim of exemption with respect to the property as provided in Section 484.070, but the failure to so claim that the property is exempt from attachment will not preclude the defendant from making a claim of exemption with respect to the property at a later time.

(h) Either the defendant or the defendant's attorney or both of them may be present at the hearing.

(i) The notice shall contain the following statement: "You may seek the advice of an attorney as to any matter connected with the plaintiff's application. The attorney should be consulted promptly so that the attorney may assist you before the time set for hearing."

SEC. 5. Section 527 of the Code of Civil Procedure is amended to read:

527. (a) A preliminary injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor. No preliminary injunction shall be granted without notice to the opposing party.

(b) A temporary restraining order or a preliminary injunction, or both, may be granted in a class action, in which one or more of the parties sues or defends for the benefit of numerous parties upon the same grounds as in other actions, whether or not the class has been certified.

(c) No temporary restraining order shall be granted without notice to the opposing party, unless both of the following requirements are satisfied:

(1) It appears from facts shown by affidavit or by the verified complaint that great or irreparable injury will result to the applicant before the matter can be heard on notice.

(2) The applicant or the applicant's attorney certifies one of the following to the court under oath:

(A) That within a reasonable time prior to the application the applicant informed the opposing party or the opposing party's attorney at what time and where the application would be made.

(B) That the applicant in good faith attempted but was unable to inform the opposing party and the opposing party's attorney, specifying the efforts made to contact them.

(C) That for reasons specified the applicant should not be required to so inform the opposing party or the opposing party's attorney.

(d) In case a temporary restraining order is granted without notice in the contingency specified in subdivision (c):

(1) The matter shall be made returnable on an order requiring cause to be shown why a preliminary injunction should not be

granted, on the earliest day that the business of the court will admit of, but not later than 15 days or, if good cause appears to the court, 22 days from the date the temporary restraining order is issued.

(2) The party who obtained the temporary restraining order shall, within five days from the date the temporary restraining order is issued or two days prior to the hearing, whichever is earlier, serve on the opposing party a copy of the complaint if not previously served, the order to show cause stating the date, time, and place of the hearing, any affidavits to be used in the application, and a copy of the points and authorities in support of the application. The court may for good cause, on motion of the applicant or on its own motion, shorten the time required by this paragraph for service on the opposing party.

(3) When the matter first comes up for hearing, if the party who obtained the temporary restraining order is not ready to proceed, or if the party has failed to effect service as required by paragraph (2), the court shall dissolve the temporary restraining order.

(4) The opposing party is entitled to one continuance for a reasonable period of not less than 15 days or any shorter period requested by the opposing party, to enable the opposing party to meet the application for a preliminary injunction. If the opposing party obtains a continuance under this paragraph, the temporary restraining order shall remain in effect until the date of the continued hearing.

(5) Upon the filing of an affidavit by the applicant that the opposing party could not be served within the time required by paragraph (2), the court may reissue any temporary restraining order previously issued. The reissued order shall be made returnable as provided by paragraph (1), with the time for hearing measured from the date of reissuance. No fee shall be charged for reissuing the order.

(e) The opposing party may, in response to an order to show cause, present affidavits relating to the granting of the preliminary injunction, and if the affidavits are served on the applicant at least two days prior to the hearing, the applicant shall not be entitled to any continuance on account thereof. On the day the order is made returnable, the hearing shall take precedence of all other matters on the calendar of the day, except older matters of the same character, and matters to which special precedence may be given by law. When the cause is at issue it shall be set for trial at the earliest possible date and shall take precedence of all other cases, except older matters of the same character, and matters to which special precedence may be given by law.

(f) Notwithstanding failure to satisfy the time requirements of this section, the court may nonetheless hear the order to show cause why a preliminary injunction should not be granted if the moving and supporting papers are served within the time required by Section 1005 and one of the following conditions is satisfied:

(1) The order to show cause is issued without a temporary

restraining order.

(2) The order to show cause is issued with a temporary restraining order, but is either not set for hearing within the time required by paragraph (1) of subdivision (d), or the party who obtained the temporary restraining order fails to effect service within the time required by paragraph (2) of subdivision (d).

(g) This section does not apply to an order issued under the Family Code.

(h) There shall be no filing fee for a petition or response relating to a protective order, restraining order, or a permanent injunction restraining violence or threats of violence in any action brought pursuant to this chapter.

SEC. 6. Section 527.6 of the Code of Civil Procedure is amended to read:

527.6. (a) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section.

(b) For the purposes of this section, "harassment" is a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff. "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(c) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with Section 527, except to the extent this section provides a rule that is inconsistent. A temporary restraining order may be issued with or without notice upon an affidavit which, to the satisfaction of the court, shows reasonable proof of harassment of the plaintiff by the defendant, and that great or irreparable harm would result to the plaintiff. A temporary restraining order issued under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, or, if the court extends the time for hearing under subdivision (d), not to exceed 22 days, unless otherwise modified or terminated by the court.

(d) Within 15 days, or, if good cause appears to the court, 22 days, from the date the temporary restraining order is issued, a hearing shall be held on the petition for the injunction. The defendant may file a response which explains, excuses, justifies, or denies the alleged harassment or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment. An injunction issued pursuant to this section shall have a duration of not more than three years. At

any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(e) Nothing in this section shall preclude either party from representation by private counsel or from appearing on the party's own behalf.

(f) In a proceeding under this section where there are allegations or threats of domestic violence, a support person may accompany a party in court and, where the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence. The support person is not present as a legal adviser and shall not give legal advice. The support person shall assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings where the person who alleges he or she is a victim of domestic violence and the other party must be present in close proximity. Nothing in this subdivision precludes the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(g) Upon filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made within five days from the date the temporary restraining order is issued or two days before the hearing, whichever is earlier. The court may for good cause, on motion of the applicant or on its own motion, shorten the time for service on the opposing party.

(h) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported harassment.

(i) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(j) Any willful disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(k) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of the Civil Code or by Division 10 (commencing with Section 6200) of the Family Code. Nothing in this section shall preclude a plaintiff's right

to use other existing civil remedies.

(*l*) The Judicial Council shall promulgate forms and instructions therefor, rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise.

SEC. 7. Section 664.6 of the Code of Civil Procedure is amended to read:

664.6. If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

SEC. 7.5. Section 1161.2 of the Code of Civil Procedure is amended to read:

1161.2. (a) Except as provided in subdivision (g), in any case filed under this chapter in municipal court, the court clerk shall not allow access to the court file, index, register of actions, or other court records until 60 days following the date the complaint is filed, except pursuant to an ex parte court order upon a showing of good cause therefor by any person including, but not limited to, a newspaper publisher. However, the clerk of the court shall allow access to the court file to a party in the action, an attorney of a party in the action, or any other person who (1) provides to the clerk the names of at least one plaintiff, one defendant, and the address, including the apartment, unit, or space number, if applicable, of the subject premises, or (2) provides to the clerk the name of one of the parties or the case number and can establish through proper identification that he or she resides at the subject premises.

(b) For purposes of this section "good cause" includes, but is not limited to, the gathering of newsworthy facts by a person described in Section 1070 of the Evidence Code. It is the intent of the Legislature that a simple procedure be established to request the ex parte order described in subdivision (a).

(c) Except as provided in subdivision (g), upon the filing of any case so restricted, the court clerk shall mail notice to each defendant named in the action. The notice shall be mailed to the address provided in the complaint. The notice shall contain a statement that an unlawful detainer complaint (eviction action) has been filed naming that party as a defendant, and that access to the court file will be delayed for 60 days except to a party, an attorney for one of the parties, or any other person who (1) provides to the clerk the names of at least one plaintiff and one defendant in the action and provides to the clerk the address, including any applicable apartment, unit, or space number, of the subject premises, or (2) provides to the clerk the name of one of the parties in the action or the case number and can establish through proper identification that he or she lives at the subject premises. The notice shall also contain a statement that access

to the court index, register of actions, or other records is not permitted until 60 days after the complaint is filed, except pursuant to an ex parte order upon a showing of good cause therefor. The notice shall contain on its face the name and phone number of the county bar association and the name and phone number of an office funded by the federal Legal Services Corporation which provides legal services to low-income persons in the county in which the action is filed. The notice shall state that these numbers may be called for legal advice regarding the case. The notice shall be issued between 24 and 48 hours of the filing of the complaint, excluding weekends and holidays. One copy of the notice shall be addressed to "all occupants" and mailed separately to the subject premises. The notice shall not constitute service of the summons and complaint.

(d) Notwithstanding any other provision of law, the court shall, upon adoption of a resolution by the board of supervisors requiring such a fee, charge an additional fee for filing a first appearance by the plaintiff in an amount equal in the aggregate to the actual cost of complying with this section, but which shall not exceed a maximum of four dollars ($4). This fee shall be included as part of the total filing fee for actions filed under this chapter. Any such board resolution in effect on January 1, 1994, shall remain in effect until it is repealed.

(e) A municipal court, after consultation with local associations of rental property owners, tenant groups, and providers of legal services to tenants, may exempt itself from the operation of this section upon a finding that unscrupulous eviction defense services are not a substantial problem in the judicial district. The court shall review the finding every 12 months. An exempt court shall not charge the additional fee authorized in subdivision (d).

(f) The Judicial Council shall examine the extent to which requests for access to files pursuant to an ex parte order under subdivision (a) are granted or denied, and if denied, the reason for the denial of access.

(g) This section shall not apply to a case which seeks to terminate a mobilehome park tenancy if the statement of the character of the proceeding in the caption of the complaint clearly indicates that the complaint seeks termination of a mobilehome park tenancy.

SEC. 8. Section 1281.6 of the Code of Civil Procedure is amended to read:

1281.6. If the arbitration agreement provides a method of appointing an arbitrator, such method shall be followed. If the arbitration agreement does not provide a method for appointing an arbitrator, the parties to the agreement who seek arbitration and against whom arbitration is sought may agree on a method of appointing an arbitrator and that method shall be followed. In the absence of an agreed method, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails to act and his successor has not been appointed, the court, on petition of a party to the arbitration agreement, shall appoint the arbitrator.

When a petition is made to the court to appoint a neutral arbitrator, the court shall nominate five persons from lists of persons supplied jointly by the parties to the arbitration or obtained from a governmental agency concerned with arbitration or private disinterested association concerned with arbitration. The parties to the agreement who seek arbitration and against whom arbitration is sought may within five days of receipt of notice of such nominees from the court jointly select the arbitrator whether or not such arbitrator is among the nominees. If such parties fail to select an arbitrator within the five-day period, the court shall appoint the arbitrator from the nominees.

All neutral arbitrators shall comply with the requirements of Section 1297.121, which requirements shall apply to every agreement to arbitrate pursuant to this title.

SEC. 8.5. Section 1513.5 of the Code of Civil Procedure is amended to read:

1513.5. (a) Except as provided in subdivision (c), if the holder has in its records an address for the apparent owner, which the holder's records do not disclose to be inaccurate, every banking or financial organization shall make reasonable efforts to notify by mail any customer that the customer's deposit, account, shares, or other interest in the banking or financial organization will escheat to the state pursuant to subdivision (a) or (b) of Section 1513. The holder shall give notice either:

(1) Not less than two years nor more than two and one-half years after the date of last activity by, or communication with, the owner with respect to the account, deposit, shares, or other interest, as shown on the record of the financial organization.

(2) Not less than six nor more than 12 months before the time the account, deposit, shares, or other interest becomes reportable to the Controller in accordance with this chapter.

(b) The notice required by this section shall specify the time that the deposit, account, shares, or other interest will escheat and the effects of escheat, including the necessity for filing a claim for the return of the deposit, account, shares, or other interest. It shall also include a form, as prescribed by the Controller, by which the customer may declare an intention to maintain the deposit, account, shares, or other interest. If that form is filled out, signed by the customer, and returned to the banking or financial organization, it shall satisfy the requirement of paragraph (3) of subdivision (a) or paragraph (3) of subdivision (b) of Section 1513. The banking or financial organization may impose a service charge on the deposit, account, shares, or other interest for this notice in an amount not to exceed the administrative cost of mailing the notice and form and in no case to exceed two dollars ($2).

(c) Notice as provided by subdivisions (a) and (b) shall not be required for deposits, accounts, shares, or other interests of less than twenty-five dollars ($25), and no service charge may be made for notice on these items.

SEC. 9. Section 952 of the Evidence Code is amended to read:

952. As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship. A communication between a client and his or her lawyer is not deemed lacking in confidentiality solely because the communication is transmitted by facsimile, cellular telephone, or other electronic means between the client and his or her lawyer.

SEC. 10. Section 27287 of the Government Code is amended to read:

27287. Unless it belongs to the class provided for in either Sections 27282 to 27286, inclusive, or Sections 1202 or 1203, of the Civil Code, or is a fictitious mortgage or deed of trust as provided in Sections 2952, or 2963, of the Civil Code, or is a fictitious oil and gas lease as provided in Section 1219 of the Civil Code, or is a claim of lien, as provided in Section 3084 of the Civil Code, or a notice of completion, as provided in Section 3093 of the Civil Code, before an instrument can be recorded its execution shall be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary or other person executing it on behalf of the corporation, or, except for any grant deed other than a trustee's deed or a deed of reconveyance, mortgage, deed of trust, or security agreement, proved by subscribing witness or as provided in Sections 1198 and 1199 of the Civil Code, and the acknowledgment or proof certified as prescribed by law.

SEC. 11. Section 68620 of the Government Code is amended to read:

68620. (a) Operative July 1, 1992, each municipal and justice court shall establish a delay reduction program in consultation with the local bar that is consistent with the provisions of this article. In its discretion, the Judicial Council may assist in the development of, or may develop and adopt, any or all procedures, standards, or policies for a delay reduction program in municipal and justice courts on a statewide basis which are consistent with the provisions of the Trial Court Delay Reduction Act.

(b) Actions and proceedings subject to the provisions of Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure or provisions of Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure shall not be assigned to or governed by the provisions of any delay reduction program established pursuant to the section.

(c) It is the intent of the Legislature that the civil discovery in

actions and proceedings subject to a program established pursuant to Article 2 (commencing with Section 90) of Chapter 5 of Title 1 of Part 1 of the Code of Civil Procedure shall be governed by the times and procedures specified in that article. Civil discovery in these actions and proceedings shall not be affected by the provisions of any delay reduction program adopted pursuant to this section.

CHAPTER 588

An act to amend Section 8265.5 of the Education Code, relating to child care.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 8265.5 of the Education Code is amended to read:

8265.5. In order to reflect the additional expense of serving children who meet any of the criteria outlined in subdivisions (a) to (g), inclusive, the provider agency's reported child days of enrollment for these children shall be multiplied by the adjustment factors listed below.

The adjustment factors shall apply to those programs for which assigned reimbursement rates are at or below the standard reimbursement rate. In addition, the adjustment factors shall apply to those programs for which assigned reimbursement rates are above the standard reimbursement rate, but the reimbursement rate, as adjusted, shall not exceed the adjusted standard reimbursement rate.

(a) For infants who are 0 to 18 months of age and are served in a child day care center, the adjustment factor shall be 1.7.

(b) For toddlers who are 18 to 36 months of age and are served in a child day care center, the adjustment factor shall be 1.4.

(c) For infants and toddlers who are 0 to 36 months of age and are served in a family child care home, the adjustment factor shall be 1.4.

(d) For children with exceptional needs who are 0 to 21 years of age, the adjustment factor shall be 1.2.

(e) For severely handicapped children who are 0 to 21 years of age, the adjustment factor shall be 1.5.

(f) For a child at risk of neglect, abuse, or exploitation who are 0 to 14 years of age, the adjustment factor shall be 1.1.

(g) For limited-English-speaking and non-English-speaking children who are 2 years of age through kindergarten age, the adjustment factor shall be 1.1.

Use of these adjustment factors shall not increase the provider agency's total annual allocation.

Days of enrollment for children having more than one of the

criteria outlined in subdivisions (a) to (g), inclusive, shall not be reported under more than one of the above categories.

Reimbursement resulting from the use of the above adjustment factors shall be used for special and appropriate services for each child.

SEC. 2. It is the intent of the Legislature that the State Department of Education ensure that the level of child care and development services provided for infants in the 1994–95 fiscal year is at least equal to the level of those services provided in the 1993–94 fiscal year.

CHAPTER 589

An act to amend Sections 8449 , 8450, and 8453 of, and to add Section 8450.5 to, the Government Code, relating to economic development.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 8449 of the Government Code is amended to read:

8449. (a) Regional technology alliances shall be primarily responsible for evaluating and ranking proposal applications for their designated geographical areas. Proposal applications shall be sent to the regional technology alliance for the region. Evaluation committees shall be composed of regional technology alliance staff and other members who may include nonvoting representatives from the Office of Strategic Technology in the Trade and Commerce Agency. If a proposal is statewide in nature, applications may be sent directly to the Office of Strategic Technology in the Trade and Commerce Agency for evaluation and ranking.

(b) Applicants seeking state matching funds for their proposal shall apply to the regional technology alliance within their designated geographical area. Regional technology alliance staff, along with Office of Strategic Technology staff and technical staff from related state agencies, shall review, evaluate, and rank these proposals. If a proposal is statewide in nature, or if no regional technology alliance has been designated for a geographical area, application may be sent directly to the Office of Strategic Technology in the Trade and Commerce Agency for evaluation and ranking. Those applicants not receiving state matching funds as selected by the Defense Conversion Council shall be timely notified of the status of their proposals.

SEC. 2. Section 8450 of the Government Code is amended to read:

8450. For applications in their regions, the regional technology alliance shall evaluate and rank proposals for applicable state and federal funding sources and forward the evaluations and rankings to the Office of Strategic Technology. If a proposal is statewide in nature or if no regional technology alliance has been designated for a geographical area, the Office of Strategic Technology shall evaluate and rank the proposal. Proposals shall be evaluated and ranked based on criteria which shall include, but not be limited to, all of the following:

(a) Immediate and measurable job creation and economic development potential for California.

(b) Clearly identified product line and market.

(c) Training component that will upgrade the skills of the proposed project's workers.

(d) Demonstrated links with the California Manufacturing Excellence Program, the California Small Business Development Center Program, the California Supplier Improvement Program, business incubators, local educational or business training institutions if the linkages are applicable and will benefit the project.

(e) Proposers and partners are small businesses, including those owned by women, minorities, and disabled veterans.

SEC. 3. Section 8450.5 is added to the Government Code, to read:

8450.5. (a) The Legislature finds and declares all of the following:

(1) In the 1993–94 fiscal year, only nine California Technology Reinvestment Project (TRP) proposals that were selected to receive state matching grants were awarded federal grants.

(2) As a result, only about two million three hundred thousand dollars ($2,300,000) or 4 percent of the sixty-one million seven hundred thousand dollars ($61,700,000) in state matching grants available in the 1993–94 fiscal year for winning California TRP proposals were encumbered.

(3) The small number of proposals that received both state matching grants and federal TRP grants raises serious questions about the compatibility of state and federal award criteria.

(4) To keep California proposals competitive with the rest of the nation, state matching grant criteria should be at least as stringent as federal award criteria.

(b) For purposes of this section"state matching grant criteria" means those criteria in Section 5474 of Title 10 of the California Code of Regulations.

(c) The Trade and Commerce Agency shall adopt state matching grant criteria that are at least as stringent as federal award criteria.

(d) State matching grant criteria shall, where federal criteria warrant, favor proposals that do all of the following:

(1) Advance defense conversion objectives.

(2) Address needs of defense suppliers and their subtier suppliers.

(3) Increase competitiveness, number of jobs, and quality of jobs.

(e) The agency shall, where federal criteria warrant, adopt state

matching grant criteria relevant to product line and market that are at least as stringent as federal award criteria. State matching grant criteria shall favor proposals with evidence of all of the following:

(1) The proposed activity will be commercially sustained within five years without federal funding.

(2) The participants are effective in similar kinds of activities.

(3) Multidisciplinary planning is adequate.

(4) The participants possess all necessary skills for achieving a product line and market.

(f) The agency shall, where federal criteria warrant, adopt state matching grant criteria relevant to a management plan that are at least as stringent as federal award criteria. State matching grant criteria shall favor proposals with all of the following:

(1) An appropriate organizational approach to carry out activities.

(2) Quality and experienced leadership.

(3) Sound staffing plans.

(4) Thorough evaluation plans.

(5) Clear entity responsible for performance.

(6) Evidence of significant private industry involvement and support.

(g) The agency shall, where federal criteria warrant, adopt state matching grant criteria relevant to an education plan that are at least as stringent as federal award criteria. State matching grant criteria shall favor proposals with both of the following:

(1) Commitment to providing high quality, accessible manufacturing education.

(2) Innovative, high quality, useful, and effective approaches for improving engineering education in manufacturing.

(h) The agency shall, where federal criteria warrant, adopt state matching grant criteria relevant to target populations that are at least as stringent as federal award criteria. State matching grant criteria shall favor proposals involving both of the following:

(1) Defense firms and defense work force.

(2) Significant numbers of women, members of underrepresented minority groups, and individuals with disabilities through active recruitment.

(i) The agency shall, where federal criteria warrant, adopt state matching grant criteria relevant to a networking plan that are at least as stringent as federal award criteria. State matching grant criteria shall favor proposals involving defense industry involvement and commitment, and quality industrial funding commitment.

(j) The agency shall, where federal criteria warrant, adopt state matching grant criteria relevant to resources that are at least as stringent as federal award criteria. State matching grant criteria shall favor proposals with all of the following:

(1) Fully qualified faculty and industry participants, experienced in research and education in manufacturing engineering.

(2) Adequate committed resources.

(3) Likelihood to attract nonfederal funding sources.

SEC. 4. Section 8453 of the Government Code is amended to read:

8453. (a) In making recommendations, the review panels shall apply the following criteria and priorities as determined by the council and the agency responsible for administering the funding source. The panels' review shall consist of at least:

(1) A determination as to whether the project is eligible, the application is complete, the proposed use of funding is consistent with the requirements of the funding source, a determination that there is no conflict of interest, and any other technical evaluation determined necessary.

(2) A review to determine a single, consolidated list of proposals ranked by the degree to which each meets the council's criteria described in Section 8450.

(3) The review panels shall give additional priority to proposals from areas of the state that have been most severely affected by reductions in federal defense spending, resulting in significant job losses and dislocation.

(b) All applications transmitted to the Office of Strategic Technology which received a positive review shall be transmitted to the Defense Conversion Council. The council shall make funding recommendations on the proposals receiving the highest ranking, unless it finds that changes to the ranking are necessary due to noncompliance with the council criteria, conflicts of interest, or lack of geographic diversity. For purposes of developing funding recommendations pursuant to this section, the Defense Conversion Council's deliberations shall be closed to the representatives of the regional technology alliances.

(c) Any regional technology alliance which has an application which received a negative review, or a ranking which the alliance finds unacceptable, may appeal the panel's decision to the Defense Conversion Council which shall only overturn the panel's decision if it finds clear and convincing evidence that the panel's determination or ranking was unsubstantiated.

SEC. 5. The Legislature hereby encourages the regional technology alliances to do all of the following:

(a) Collaborate with the California Small Business Development Program in providing proposal preparation assistance to small businesses seeking to qualify for federal funds, including those businesses owned by women, minorities, and disabled veterans.

(b) Foster collaboration between large businesses and small businesses seeking to qualify for federal funds, including those businesses owned by women, minorities, and disabled veterans.

(c) Identify existing barriers to the collaboration of small and large businesses, including obstacles to the development of negotiated property agreements, and work with industry to overcome those barriers.

CHAPTER 590

An act to amend Section 23249.58 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 23249.58 of the Vehicle Code is amended to read:

23249.58. This article shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

CHAPTER 591

An act to amend Sections 10850, 10850.3, 17006, and 17006.5 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 10850 of the Welfare and Institutions Code is amended to read:

10850. (a) Except as otherwise provided in this section, all applications and records concerning any individual made or kept by any public officer or agency in connection with the administration of any provision of this code relating to any form of public social services for which grants-in-aid are received by this state from the United States government shall be confidential, and shall not be open to examination for any purpose not directly connected with the administration of that program, or any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such program. The disclosure of any information which identifies by name or address any applicant for or recipient of these grants-in-aid to any committee or legislative body is prohibited, except as provided in subdivision (b).

(b) Except as otherwise provided in this section, no person shall publish or disclose or permit or cause to be published or disclosed any list of persons receiving public social services. Any county welfare department in this state may release lists of applicants for, or recipients of, public social services, to any other county welfare department or the State Department of Social Services, and these lists or any other records shall be released when requested by any

county welfare department or the State Department of Social Services. These lists or other records shall only be used for purposes directly connected with the administration of public social services. Except for those purposes, no person shall publish, disclose, or use or permit or cause to be published, disclosed, or used any confidential information pertaining to an applicant or recipient.

Any county welfare department and the State Department of Social Services shall provide any governmental entity which is authorized by law to conduct an audit or similar activity in connection with the administration of public social services, including any committee or legislative body so authorized, with access to any public social service applications and records described in subdivision (a) to the extent of the authorization. Those committees, legislative bodies and other entities may only request or use these records for the purpose of investigating the administration of public social services, and shall not disclose the identity of any applicant or recipient except in the case of a criminal or civil proceeding conducted in connection with the administration of public social services.

However, this section shall not prohibit the furnishing of this information to other public agencies to the extent required for verifying eligibility or for other purposes directly connected with the administration of public social services, or to county superintendents of schools or superintendents of school districts only as necessary for the administration of federally assisted programs providing assistance in cash or in-kind or services directly to individuals on the basis of need. Any person knowingly and intentionally violating the provisions of this subdivision is guilty of a misdemeanor.

(c) The State Department of Social Services shall inform the Department of Motor Vehicles of the names, birth dates, and addresses of all applicants or recipients of aid to the blind. The Department of Motor Vehicles, upon receipt of this information, shall inform the State Department of Social Services of any applicant or recipient of aid to the blind who holds a valid California driver's license.

(d) The State Department of Social Services may make rules and regulations governing the custody, use, and preservation of all records, papers, files, and communications pertaining to the administration of the laws relating to public social services under their jurisdiction. The rules and regulations shall be binding on all departments, officials and employees of the state, or of any political subdivision of the state and may provide for giving information to or exchanging information with agencies, public or political subdivisions of the state, and may provide for giving information to or exchanging information with agencies, public or private, which are engaged in planning, providing or securing social services for or in behalf of recipients or applicants; and for making case records available for research purposes, provided, that the research will not result in the disclosure of the identity of applicants for or recipients

of public social services.

(e) Any person, including every public officer and employee, who knowingly secures or possesses, other than in the course of official duty, an official list or a list compiled from official sources, published or disclosed in violation of this section, of persons who have applied for or who have been granted any form of public social services for which state or federal funds are made available to the counties is guilty of a misdemeanor.

(f) This section shall not be construed to prohibit an employee of a county welfare department from disclosing confidential information concerning a public social services applicant or recipient to a state or local law enforcement agency investigating or gathering information regarding a criminal act committed in a welfare department office, a criminal act against any county or state welfare worker, or any criminal act witnessed by any county or state welfare worker while involved in the administration of public social services at any location. Further, this section shall not be construed to prohibit an employee of a county welfare department from disclosing confidential information concerning a public social services applicant or recipient to a state or local law enforcement agency investigating or gathering information regarding a criminal act intentionally committed by the applicant or recipient against any off-duty county or state welfare worker in retaliation for an act performed in the course of the welfare worker's duty when the person committing the offense knows or reasonably should know that the victim is a state or county welfare worker. These criminal acts shall include only those which are in violation of state or local law. Disclosure of confidential information pursuant to this subdivision shall be limited to the applicant's or recipient's name, physical description, and address.

(g) The provisions of this section shall be operative only to the extent permitted by federal law and shall not apply to, but exclude, Chapter 7 (commencing with Section 14000) of this division, entitled "Basic Health Care", and for which a grant-in-aid is received by the state under Title XIX of the Social Security Act.

SEC. 2. Section 10850.3 of the Welfare and Institutions Code is amended to read:

10850.3. (a) Notwithstanding Section 10850, an authorized employee of a county welfare department may disclose confidential information concerning a public social services applicant or recipient to any law enforcement agency where a warrant has been issued for the arrest of the applicant or recipient for the commission of a felony or a misdemeanor. Information that may be released pursuant to this section shall be limited to the name, address, telephone number, birthdate, social security number, and physical description, of the applicant for, or recipient of, public social services.

(b) A county welfare department may release the information specified by this section to any law enforcement agency only upon a written request from the agency specifying that a warrant of arrest

for the commission of a felony or misdemeanor has been issued as to the applicant or recipient. This request may be made only by the head of the law enforcement agency, or by an employee of the agency so authorized and identified by name and title by the head of the agency in writing to the county welfare department. A county welfare department shall notify all applicants of public social services that release of confidential information from their records will not be protected if a felony or misdemeanor arrest warrant is issued against the applicant. A recipient of public social services shall be notified, at the time of renewal of his or her application for public social services, that a release of confidential information can be made if a felony or misdemeanor arrest warrant is issued against the recipient.

(c) This section shall not be construed to authorize the release of a general list identifying individuals applying for or receiving public social services.

(d) The provisions of this section shall be operative only to the extent permitted by federal law. The section shall not apply to, but shall exclude the Medi-Cal program, established pursuant to Chapter 7 (commencing with Section 14000) and following.

SEC. 3. Section 17006 of the Welfare and Institutions Code is amended to read:

17006. (a) The board of supervisors of every county as a board, or by committee or by any person or society as it may authorize, shall investigate every application for relief from the funds of the county, shall supervise by periodic visitation every person receiving that relief, shall devise ways and means for bringing persons unable to maintain themselves to self-support, and shall keep full and complete records of the investigation, supervision, relief, and rehabilitation as shall be prescribed by the department. These records shall be confidential and shall not be open to examination or inspection, except by the grand jury of the county or by a board or an officer of the state or the county charged with the supervision or direction of that relief or with the control or expenditure of funds applicable to that relief. Any citizen shall be entitled to demand and receive from the board, officer, committee, person, or society having custody of these records a statement of the amount, character, and value of the relief received by any person.

(b) (1) This section shall not be construed to prohibit an employee of a county welfare department from disclosing confidential information concerning a public social services applicant or recipient to a state or local law enforcement agency investigating or gathering information regarding a criminal act committed in a welfare department office, a criminal act against any county or state welfare worker, or any criminal act witnessed by any county or state welfare worker while involved in the administration of public social services at any location. Further, this section shall not be construed to prohibit an employee of a county welfare department from disclosing confidential information concerning a public social services applicant or recipient to a state or local law

enforcement agency investigating or gathering information regarding a criminal act intentionally committed by an applicant or recipient against any off-duty county or state welfare worker in retaliation for an act performed in the course of the welfare worker's duty when the person committing the offense knows or reasonably should know that the victim is a state or county welfare worker.

(2) For purposes of this subdivision, "criminal act" means only an act that is in violation of state or local law.

(3) Disclosure of confidential information pursuant to this subdivision shall be limited to the applicant's name, physical description, and address.

SEC. 4. Section 17006.5 of the Welfare and Institutions Code is amended to read:

17006.5. (a) Notwithstanding Section 17006, the board, officer, committee, person, or society having custody of the records cited in Section 17006 may disclose to any law enforcement agency:

(1) The name, address, birthdate, social security number, and physical description, of any person receiving relief, if a warrant has been issued for the arrest of the person for the commission of a felony or misdemeanor.

The board, officer, committee, person, or society having custody of the records may release the information specified by this subdivision to any law enforcement agency upon a written request from the agency specifying that a warrant of arrest for the commission of a felony or misdemeanor has been issued as to the applicant or recipient. This request may be made only by the head of a law enforcement agency, or by an employee of the agency so authorized and identified by name and title by the head of the agency in writing. It is the intent of this section that a county welfare department shall notify all applicants of public social services that release of confidential information of their records will not be protected if a felony or misdemeanor arrest warrant is issued against the applicant. A recipient of public social services shall be notified at the time of renewal of his or her application for relief of release of confidential information if a felony or misdemeanor arrest warrant is issued against the recipient.

(2) The name, address, telephone number, birthdate, social security number, and physical description of any person receiving relief upon written request of the head of any law enforcement agency specifying that the person is deceased and that the agency is otherwise unable to adequately identify the person. The information specified may alternatively be released by telephone, whereupon the head of the law enforcement agency shall submit the request in writing within five days of the release.

(b) This section shall not be construed to authorize the release of a general list identifying individuals applying for or receiving public relief.

CHAPTER 592

An act to amend Sections 12003 and 12240 of, to add Sections 12015.5 and 12028 to, and to add and repeal Section 12015.3 of, the Business and Professions Code, relating to weights and measures.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 12003 of the Business and Professions Code is amended to read:

12003. "Director" or "Secretary" means the Secretary of Food and Agriculture.

SEC. 2. Section 12015.3 is added to the Business and Professions Code, to read:

12015.3. (a) The sealer may levy a civil penalty against a person violating any provision of this division or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars ($1,000) for each violation. It is a complete defense to a criminal prosecution for a violation of any provision of this division or a regulation adopted pursuant to any provision of this division that the defendant has been assessed and has paid a civil penalty under this section for the same act or acts constituting the violation. Any civil penalty under this section shall be cumulative to civil remedies or penalties imposed under any other law.

(b) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing. The request shall be made within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the sealer's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the sealer may take the action proposed without a hearing.

(c) If the person upon whom the sealer levied a civil penalty requested and appeared at a hearing, the person may appeal the sealer's decision to the secretary within 30 days of the date of receiving a copy of the sealer's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the sealer's decision. The appellant shall file a copy

of the appeal with the sealer at the same time it is filed with the secretary.

(2) The appellant and the sealer may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the secretary, present the record of the hearing including written evidence that was submitted at the hearing and a written argument to the secretary stating grounds for affirming, modifying, or reversing the sealer's decision.

(3) The secretary may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the sealer, and the secretary.

(5) The secretary shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the secretary finds substantial evidence in the record to support the sealer's decision, the secretary shall affirm the decision.

(6) The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the secretary may affirm the sealer's decision, modify the sealer's decision by reducing or increasing the amount of the penalty levied so that it is within the secretary's guidelines for imposing civil penalties, or reverse the sealer's decision. Any civil penalty increased by the secretary shall not be higher than that proposed in the sealer's notice of proposed action given pursuant to subdivision (b). A copy of the secretary's decision shall be delivered or mailed to the appellant and the sealer.

(8) Any person who does not request a hearing pursuant to subdivision (b) may not file an appeal pursuant to this subdivision.

(9) Review of a decision of the secretary may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) After the exhaustion of the appeal and review procedures provided in this section, the sealer, or his or her representative, may file a certified copy of a final decision of the sealer that directs the payment of a civil penalty and, if applicable, a copy of any decision of the secretary or his or her authorized representative rendered on an appeal from the sealer's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(e) If the civil penalty is levied by the State Sealer, the revenues

derived therefrom shall be deposited in the Department of Food and Agriculture Fund and, upon appropriation, shall be used by the State Sealer to carry out his or her responsibilities under this division. If the civil penalty is levied by the county sealer, the revenues shall be deposited in the general fund of the county and, upon appropriation by the board of supervisors, shall be used by the county sealer to carry out his or her responsibilities under this division.

(f) This section does not apply to violations involving utility meters, or to violations involving the testing and inspection of utility meters, in mobilehome parks, recreational vehicle parks, or apartment complexes, where the owner of the park or complex owns and is responsible for the utility meters.

(g) Upon the written request of the Attorney General of California, any district attorney, or any city prosecutor or city attorney described in subdivision (a) of Section 17206, the State Sealer or the county sealer within their respective jurisdictions, shall provide all reports and records regarding any actions that occurred within the four months prior to the date of the written request in which civil penalties were levied pursuant to this section or liability for costs incurred are determined pursuant to Section 12015.5.

(h) This section shall become operative 30 days after the regulations adopted pursuant to Section 12028 are filed with the Secretary of State, and shall remain in effect until a date that is two years later, and as of the next following January 1 is repealed, unless a later enacted statute which becomes operative on or before that January 1, deletes or extends that date.

SEC. 3. Section 12015.5 is added to the Business and Professions Code, to read:

12015.5. Any person convicted of violating any of the provisions of this division, or, except as provided in Section 12028, any person who is determined to be civilly liable for violating any of the provisions of this division, shall be liable for reasonable costs incurred in investigating the action.

SEC. 4. Section 12028 is added to the Business and Professions Code, to read:

12028. On or before July 1, 1995, the secretary shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that specify the types of violations for which civil penalties may be imposed pursuant to Section 12015.3, the amount of the penalty for each violation, and a procedure for providing notice to the person charged with a violation of that section. The amount of the penalty shall be based upon the seriousness of the violation and the potential for harm. No investigative costs shall be imposed pursuant to Section 12015.5 for violations for which civil penalties may be imposed pursuant to Section 12015.3.

SEC. 5. Section 12240 of the Business and Professions Code is amended to read:

12240. (a) Except as otherwise provided in this section, the

board of supervisors may, by ordinance, charge an annual device registration fee, not to exceed the county's total cost of actually inspecting or testing the devices as required by law, to recover the costs of inspecting or testing weighing and measuring devices required of the county sealer pursuant to Section 12210, and to recover the cost of carrying out Section 12211.

(b) Except as otherwise provided in this section, the device registration fee shall not exceed the amount prescribed in the Table of Maximum Annual Charges set forth in subdivision (f).

(c) The county may collect the fees biennially, in which case they shall not exceed twice the amount of an annual fee. The ordinance shall be adopted pursuant to Article 7 (commencing with Section 25120) of Chapter 1 of Part 2 of Division 2 of Title 2 of the Government Code.

(d) Retail gasoline pump meters, for which the above fees are assessed, shall be inspected as frequently as required by regulation, but not less than once every two years.

(e) Livestock scales, animal scales and scales used primarily for weighing feed and seed, for which the above fees are assessed, shall be inspected as frequently as required by regulation.

(f) Table of Maximum Annual Charges:

Number of Devices	Charge Per Location
1 to 3	$ 40
4 to 9	$ 80
10 to 19	$120
20 to 25	$160
Over 25	$200

(g) For mobilehome parks, recreational vehicle parks, and apartment complexes, where the owner of the park or complex owns and is responsible for the utility meters, the annual fee shall not exceed sixty dollars ($60) per park or complex, and a fee of up to two dollars ($2) per device per space or apartment. Mobilehome parks, recreational vehicle parks, and apartment complexes for which the above fees are assessed, shall be inspected and tested as frequently as required by regulation.

(h) For weighing devices, other than livestock and motor truck scales, with capacities of 20,000 pounds or greater, the registration fee shall be two hundred dollars ($200) per device.

(i) For motor truck scales, the registration fee shall be one hundred dollars ($100) per device.

(j) This section does not apply to farm milk tanks.

(k) A scale or device used in a certified farmers' market, as defined by Section 27512 of the Health and Safety Code, is not required to be registered in the county where the market is conducted, if the scale or device has an unexpired seal for the current year, issued by a licensed California county sealer.

(j) For livestock scales with capacities of 20,000 pounds or more, the registration fee shall be one hundred dollars ($100) per device, except that the fee for not more than three devices at a single location shall be one hundred dollars ($100).

CHAPTER 593

An act to amend Sections 52500.1 and 52522.1 of, and to add Section 52616.21 to, the Education Code, relating to adult education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 52500.1 of the Education Code is amended to read:

52500.1. Eligibility of high school pupils for enrollment in adult education programs, courses, and classes shall be limited to pupils who meet all of the following conditions:

(a) High school pupils who enroll in adult education programs, courses, and classes pursuant to Section 41976, except that high school pupils shall not be counted for adult education apportionment purposes if those pupils are enrolled in programs, courses, or classes pursuant to paragraph (5), (7), (8), (9), or (10) of subdivision (a) of Section 41976.

(b) High school pupils who have completed a counseling session that involved the pupil, a certificated representative of the high school, and the pupil's parent or guardian, and who have a school record that contains written documentation of the session and a statement that the pupil is voluntarily enrolling in the adult education course or class, and that enrollment in an adult education program, course, or class will enhance the pupil's progress toward meeting the educational requirements for graduation from high school. Commencing July 1, 1994, no school district shall enroll high school pupils pursuant to this subdivision unless the school district complies with the conditions set forth in this subdivision.

SEC. 2. Section 52522.1 of the Education Code is amended to read:

52522.1. (a) Notwithstanding Section 33050 or any other provision of law, commencing July 1, 1993, provisions of law relating to the operation of adult education programs or state funding for the operation of adult education programs may be waived only by the Superintendent of Public Instruction with the approval of the Department of Finance.

(b) This section shall become inoperative on July 1, 1995, and, as of January 1, 1996, is repealed, unless a later enacted statute, which

becomes effective on or before January 1, 1996, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 52616.21 is added to the Education Code, to read:

52616.21. Notwithstanding subdivision (a) of Section 46300 or any other law, a county office of education may administer an adult education program and each eligible school district, as specified in subdivision (e), within its jurisdiction may participate in the program. A county office of education administering that adult education program may report the average daily attendance of each school district participating in the adult education program for the purpose of receiving apportionments pursuant to Sections 52616.18 and 52616.19. The Superintendent of Public Instruction shall make apportionments pursuant to those sections to a county office of education administering that adult education program provided the following conditions are met:

(a) The county office of education has a current, valid, written mutual delineation agreement with the local community college located in the geographic area in which the adult education program is offered.

(b) The attendance of students reported is attendance while engaged in educational activities required of those students under the immediate supervision and control of a certificated employee of a school district that is under the jurisdiction of the county office of education.

(c) The county office of education serves an area of large geographic expanse that is sparsely populated and geographically isolated, as determined by the Superintendent of Public Instruction.

(d) The average daily attendance reported is only for those school districts that have agreed to participate in the county-administered adult education program.

(e) At least 5 percent of the average daily attendance reported by the school districts served by the county office of education is attributable to the school districts participating in the county-administered adult education program for the purposes of apportionments pursuant to Sections 52616.18 and 52616.19.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make necessary changes to the eligibility of certain county officers of education to adult education program funds for the 1993–94 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 594

An act to amend Sections 15600 and 15657.1 of, to amend and renumber the heading of Article 4 (commencing with Section 15630) and the heading of Article 6 (commencing with Section 15660) of Chapter 11 of Part 3 of Division 9 of, to add Section 15636 to, to add a heading to Article 4 (commencing with Section 15633) of Chapter 11 of Part 3 of Division 9 of, to add Article 6 (commencing with Section 15650), Article 7 (commencing with Section 15653), Article 8 (commencing with Section 15656), Article 9 (commencing with Section 15658), and Article 10 (commencing with Section 15659) to Chapter 11 of Part 3 of Division 9 of, to repeal Section 15635 of, to repeal Article 3 (commencing with Section 15620) of, to repeal and add Sections 15630, 15631, 15632, 15633, and 15633.5 of, and to repeal and add Article 2 (commencing with Section 15610), and Article 5 (commencing with Section 15640), of Chapter 11 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to the abuse of adults.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 15600 of the Welfare and Institutions Code is amended to read:

15600. (a) The Legislature recognizes that elders and dependent adults may be subjected to abuse, neglect, or abandonment and that this state has a responsibility to protect these persons.

(b) The Legislature further recognizes that a significant number of these persons are elderly. The Legislature desires to direct special attention to the needs and problems of elderly persons, recognizing that these persons constitute a significant and identifiable segment of the population and that they are more subject to risks of abuse, neglect, and abandonment.

(c) The Legislature further recognizes that a significant number of these persons have developmental disabilities and that mental and verbal limitations often leave them vulnerable to abuse and incapable of asking for help and protection.

(d) The Legislature recognizes that most elders and dependent adults who are at the greatest risk of abuse, neglect, or abandonment by their families or caretakers suffer physical impairments and other poor health that place them in a dependent and vulnerable position.

(e) The Legislature further recognizes that factors which contribute to abuse, neglect, or abandonment of elders and dependent adults are economic instability of the family, resentment of caretaker responsibilities, stress on the caretaker, and abuse by the caretaker of drugs or alcohol.

(f) The Legislature declares that this state shall foster and promote community services for the economic, social, and personal well-being of its citizens in order to protect those persons described in this section.

(g) The Legislature further declares that uniform state guidelines, which specify when county adult protective service agencies are to investigate allegations of abuse of elders and dependent adults and the appropriate role of local law enforcement is necessary in order to ensure that a minimum level of protection is provided to elders and dependent adults in each county.

(h) The Legislature further finds and declares that infirm elderly persons and dependent adults are a disadvantaged class, that cases of abuse of these persons are seldom prosecuted as criminal matters, and few civil cases are brought in connection with this abuse due to problems of proof, court delays, and the lack of incentives to prosecute these suits.

(i) Therefore, it is the intent of the Legislature in enacting this chapter to provide that adult protective services agencies, local long-term care ombudsman programs, and local law enforcement agencies shall receive referrals or complaints from public or private agencies, from any mandated reporter submitting reports pursuant to Section 15630, or from any other source having reasonable cause to know that the welfare of an elder or dependent adult is endangered, and shall take any actions considered necessary to protect the elder or dependent adult and correct the situation and ensure the individual's safety.

(j) It is the further intent of the Legislature in adding Article 8.5 (commencing with Section 15657) to this chapter to enable interested persons to engage attorneys to take up the cause of abused elderly persons and dependent adults.

SEC. 2. Article 2 (commencing with Section 15610) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 3. Article 2 (commencing with Section 15610) is added to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 2. Definitions

15610. The definitions contained in this article shall govern the construction of this chapter, unless the context requires otherwise.

15610.05. "Abandonment" means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

15610.07. "Abuse of an elder or a dependent adult" means physical abuse, neglect, fiduciary abuse, abandonment, isolation, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services

that are necessary to avoid physical harm or mental suffering.

15610.10. "Adult protective services" means those preventive and remedial activities performed on behalf of elders and dependent adults who are unable to protect their own interests, harmed or threatened with harm, caused physical or mental injury due to the action or inaction of another person or their own action due to ignorance, illiteracy, incompetence, mental limitation, or poor health, lacking in adequate food, shelter, or clothing, exploited of their income and resources, or deprived of entitlement due them.

15610.13. "Adult protective services agency" means a county welfare department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

15610.15. "Bureau" means the Bureau of Medi-Cal Fraud within the office of the Attorney General.

15610.17. "Care custodian" means an administrator or an employee of any of the following public or private facilities or agencies, or persons providing care or services for elders or dependent adults, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of the support staff and maintenance staff:

(a) Twenty-four-hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(b) Clinics.

(c) Home health agencies.

(d) Agencies providing publicly funded in-home supportive services.

(e) Adult day health care centers.

(f) Secondary schools that serve 18- to 22-year-old dependent adults and postsecondary educational institutions that serve dependent adults or elders.

(g) Independent living centers.

(h) Camps.

(i) Alzheimer's Disease day care resource centers.

(j) Community care facilities, as defined in Section 1502 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(k) Respite care facilities.

(*l*) Foster homes.

(m) Vocational rehabilitation facilities and work activity centers.

(n) Regional centers for persons with developmental disabilities.

(o) State Department of Social Services and State Department of Health Services licensing divisions.

(p) County welfare departments.

(q) Offices of patients' rights advocates and clients' rights advocates, including attorneys.

(r) The office of the long-term care ombudsman.

(s) Offices of public conservators, public guardians, and court investigators.

(t) Any protection or advocacy agency or entity that is designated by the Governor to fulfill the requirements and assurances of the following:

(1) The federal Developmental Disability Assistance and Bill of Rights Act, as amended, contained in Chapter 75 (commencing with Section 6000) of Title 42 of the United States Code, for protection and advocacy of the rights of persons with developmental disabilities.

(2) The Protection and Advocacy for the Mentally Ill Individuals Act of 1986, as amended, contained in Chapter 114 (commencing with Section 10801) of Title 42 of the United States Code, for the protection and advocacy of the rights of persons with mental illnesses.

(u) Any other protective, public, or private assistance agency or person providing health services or social services to elders or dependent adults.

15610.20. "Clients' rights advocate" means the individual or individuals assigned by a regional center or state hospital developmental center to be responsible for clients' rights assurance for persons with developmental disabilities.

15610.23. (a) "Dependent adult" means any person residing in this state, between the ages of 18 and 64 years, who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.

(b) "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

15610.25. "Developmentally disabled person" means a person with a developmental disability specified by or as described in subdivision (a) of Section 4512.

15610.27. "Elder" means any person residing in this state, 65 years of age or older.

15610.30. "Fiduciary abuse" means a situation in which any person who has the care or custody of, or who stands in a position of trust to, an elder or a dependent adult, takes, secretes, or appropriates their money or property, to any use or purposes not in the due and lawful execution of his or her trust.

15610.35. "Goods and services necessary to avoid physical harm or mental suffering" include, but are not limited to, all of the following:

(a) The provision of medical care for physical and mental health needs.

(b) Assistance in personal hygiene.

(c) Adequate clothing.

(d) Adequately heated and ventilated shelter.

(e) Protection from health and safety hazards.

(f) Protection from malnutrition, under those circumstances

where the results include, but are not limited to, malnutrition and deprivation of necessities or physical punishment.

(g) Transportation and assistance necessary to secure any of the needs set forth in subdivisions (a) to (f), inclusive.

15610.37. "Health practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, licensed clinical social worker, or intern, marriage, family, and child counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, a person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, a marriage, family, and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, or an unlicensed marriage, family, and child counselor intern registered under Section 4980.44 of the Business and Professions Code, state or county public health or social service employee who treats an elder or a dependent adult for any condition, a coroner, or a religious practitioner who diagnoses, examines or treats elders or dependent adults.

15610.40. "Investigation" means that activity undertaken to determine the validity of a report of elder or dependent adult abuse.

15610.43. (a) "Isolation" means any of the following:

(1) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.

(2) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.

(3) False imprisonment, as defined in Section 236 of the Penal Code.

(4) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.

(b) The acts set forth in subdivision (a) shall be subject to a rebuttable presumption that they do not constitute isolation if they are performed pursuant to the instructions of a physician and surgeon licensed to practice medicine in the state, who is caring for the elder or dependent adult at the time the instructions are given, and who gives the instructions as part of his or her medical care.

(c) The acts set forth in subdivision (a) shall not constitute isolation if they are performed in response to a reasonably perceived threat of danger to property or physical safety.

15610.45. "Local law enforcement agency" means a city police or county sheriff's department, or a county probation department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

15610.47. "Long-term care facility" means any of the following:

(a) Any long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

(b) Any community care facility, as defined in paragraphs (1) and (2) of subdivision (a) of Section 1502 of the Health and Safety Code, whether licensed or unlicensed.

(c) Any swing bed in an acute care facility, or any extended care facility.

(d) Any adult day health care facility as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code.

(e) Any residential care facility for the elderly as defined in Section 1569.2 of the Health and Safety Code.

15610.50. "Long-term care ombudsman" means the State Long-Term Care Ombudsman, local ombudsman coordinators, and other persons currently certified as ombudsmen by the Department of Aging as described in Chapter 9 (commencing with Section 9700) of Division 8.5.

15610.53. "Mental suffering" means fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by threats, harassment, or other forms of intimidating behavior.

15610.55. (a) "Multidisciplinary personnel team" means any team of two or more persons who are trained in the prevention, identification, and treatment of abuse of elderly or dependent persons and who are qualified to provide a broad range of services related to abuse of elderly or dependent persons, as defined in Section 15753.5.

(b) A multidisciplinary personnel team may include, but is not limited to, all of the following:

(1) Psychiatrists, psychologists, or other trained counseling personnel.

(2) Police officers or other law enforcement agents.

(3) Medical personnel with sufficient training to provide health services.

(4) Social workers with experience or training in prevention of abuse of elderly or dependent persons.

15610.57. "Neglect" means the negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care which a reasonable person in a like position would exercise. Neglect includes, but is not limited to, all of the following:

(a) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.

(b) Failure to provide medical care for physical and mental health

needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

(c) Failure to protect from health and safety hazards.

(d) Failure to prevent malnutrition.

15610.60. "Patients' rights advocate" means a person who has no direct or indirect clinical or administrative responsibility for the patient, and who is responsible for ensuring that laws, regulations, and policies on the rights of the patient are observed.

15610.63. "Physical abuse" means any of the following:

(a) Assault, as defined in Section 240 of the Penal Code.

(b) Battery, as defined in Section 242 of the Penal Code.

(c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code.

(d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.

(e) Sexual assault, that means any of the following:

(1) Sexual battery, as defined in Section 243.4 of the Penal Code.

(2) Rape, as defined in Section 261 of the Penal Code.

(3) Rape in concert, as described in Section 264.1 of the Penal Code.

(4) Incest, as defined in Section 285 of the Penal Code.

(5) Sodomy, as defined in Section 286 of the Penal Code.

(6) Oral copulation, as defined Section 288a of the Penal Code.

(7) Penetration of a genital or anal opening by a foreign object, as defined in Section 289 of the Penal Code.

(f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:

(1) For punishment.

(2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.

(3) For any purpose not authorized by the physician and surgeon.

15610.65. "Reasonable suspicion" means an objectively reasonable suspicion that a person would entertain, based upon facts that could cause a reasonable person in a like position, drawing when appropriate upon his or her training and experience, to suspect abuse.

SEC. 4. Article 3 (commencing with Section 15620) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 5. The heading of Article 4 (commencing with Section 15630) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code is amended and renumbered to read:

Article 3. Mandatory and Nonmandatory Reports of Abuse

SEC. 6. Section 15630 of the Welfare and Institutions Code is repealed.

SEC. 7. Section 15630 is added to the Welfare and Institutions Code, to read:

15630. (a) Any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency is a mandated reporter.

(b) Any mandated reporter, who, in his or her professional capacity, or within the scope of his or her employment, has observed an incident that reasonably appears to be physical abuse, observed a physical injury where the nature of the injury, its location on the body, or the repetition of the injury clearly indicates that physical abuse has occurred or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse shall report the known or suspected instance of abuse by telephone immediately or as soon as possible, and by written report sent within two working days, as follows:

(1) If the abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the report shall be made to the local ombudsman or the local law enforcement agency.

(2) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report shall be made to designated investigators of the State Department of Mental Health or the State Department of Developmental Services or to the local law enforcement agency.

(3) If the abuse has occurred any place other than one described in paragraph (1), the report shall be made to the adult protective services agency or the local law enforcement agency.

(c) (1) Any mandated reporter who has knowledge of, or reasonably suspects that, types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsman program.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services, or to a local law enforcement agency or to the local ombudsman.

(4) If the suspected or alleged abuse occurred anywhere else, the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in

subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) When two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other person responsible for the elder or dependent adult's care, if known, the nature and extent of the elder or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse requested by the agency receiving the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(g) Failure to report physical abuse of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more that six months in the county jail or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

SEC. 8. Section 15631 of the Welfare and Institutions Code is repealed.

SEC. 9. Section 15631 is added to the Welfare and Institutions Code, to read:

15631. (a) Any person who is not a mandated reporter under Section 15630, who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse may report that abuse to a long-term care ombudsman program or local law enforcement agency when the abuse is alleged to have occurred in a long-term care facility.

(b) Any person who is not a mandated reporter under Section 15630, who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse in any place other than a long-term care facility may report the abuse to the county adult protective services agency or local law enforcement agency.

SEC. 10. Section 15632 of the Welfare and Institutions Code is repealed.

SEC. 11. Section 15632 is added to the Welfare and Institutions Code, to read:

15632. (a) In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist-patient privilege applies to the specific information reported pursuant to this chapter.

(b) Nothing in this chapter shall be interpreted as requiring an attorney to violate his or her oath and duties pursuant to Section 6067 or subdivision (e) of Section 6068 of the Business and Professions Code, and Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

SEC. 12. Section 15633 of the Welfare and Institutions Code is repealed.

SEC. 13. A heading is added to Article 4 (commencing with Section 15633) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 4. Confidentiality

SEC. 14. Section 15633 is added to the Welfare and Institutions Code, to read:

15633. (a) The reports made pursuant to Sections 15630 and 15631 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a fine of five hundred dollars ($500), or by both that fine and imprisonment.

(b) Reports of suspected elder or dependent adult abuse and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of information or the identity of the reporting party is permitted under Section 15633.5.

(2) (A) Persons who are trained and qualified to serve on multidisciplinary personnel teams may disclose to one another information and records that are relevant to the prevention, identification, or treatment of abuse of elderly or dependent persons.

(B) Except as provided in subparagraph (A), any personnel of the multidisciplinary team that receives information pursuant to this chapter, shall be under the same obligations and subject to the same confidentiality penalties as the person disclosing or providing that information. The information obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(c) This section shall not be construed to allow disclosure of any reports or records relevant to the reports of elder or dependent adult abuse if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of the abuse.

SEC. 15. Section 15633.5 of the Welfare and Institutions Code is

repealed.

SEC. 16. Section 15633.5 is added to the Welfare and Institutions Code, to read:

15633.5. (a) Information relevant to the incident of elder or dependent adult abuse may be given to an investigator from an adult protective services agency, a local law enforcement agency, or the bureau of Medi-Cal Fraud who is investigating the known or suspected case of elder or dependent adult abuse.

(b) The identity of all persons who report under this chapter shall be confidential and disclosed only among adult protective services agencies, long-term care ombudsman programs, licensing agencies, local law enforcement agencies, and the bureau, to counsel representing an adult protective services agency, long-term care ombudsman program, licensing agency, or a local law enforcement agency, by the bureau to the district attorney in a criminal prosecution, when persons reporting waive confidentiality, or by court order.

(c) Notwithstanding subdivisions (a) and (b), any person reporting pursuant to Section 15631 shall not be required to include his or her name in the report.

SEC. 17. Section 15635 of the Welfare and Institutions Code is repealed.

SEC. 18. Section 15636 is added to the Welfare and Institutions Code, to read:

15636. (a) Any victim of elder or dependent adult abuse may refuse or withdraw consent at any time to an investigation or the provision of protective services by an adult protective services agency or long-term care ombudsman program. The adult protective services agency shall act only with the consent of the victim unless a violation of the Penal Code has been alleged. A local long-term care ombudsman shall act only with the consent of the victim and shall disclose confidential information only after consent to disclose is given by the victim or pursuant to court order.

(b) If the elder or dependent adult abuse victim is so incapacitated that he or she cannot legally give or deny consent to protective services, a petition for temporary conservatorship or guardianship may be initiated in accordance with Section 2250 of the Probate Code.

SEC. 19. Article 5 (commencing with Section 15640) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 20. Article 5 (commencing with Section 15640) is added to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 5. Local Agency Cross-Reporting

15640. (a) (1) An adult protective services agency shall immediately, or as soon as practically possible, report by telephone

to the law enforcement agency having jurisdiction over the case any known or suspected instance of criminal activity, and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse, every known or suspected instance of physical abuse of an elder or dependent adult. A county adult protective services agency shall also send a written report thereof within two working days of receiving the information concerning the incident to each agency to which it is required to make a telephone report under this subdivision.

(2) Only a written report of possible criminal activity, sent within two working days, shall be required in the case of abuse other than physical abuse.

(3) If an adult protective services agency receives a report of abuse alleged to have occurred in a long-term care facility, that adult protective services agency shall immediately inform the person making the report that he or she is required to make the report to the long-term care ombudsman program or to a local law enforcement agency. The adult protective services agency shall not accept the report.

(b) If an adult protective services agency or local law enforcement agency or ombudsman program receiving a report of known or suspected elder or dependent adult abuse involving physical abuse determines, pursuant to its investigation, that the abuse is being committed by a health practitioner licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any related initiative act, or by a person purporting to be a licensee, the adult protective services agency or local law enforcement agency or ombudsman program shall immediately report this information to the appropriate licensing agency. The licensing agency shall investigate the report in light of the potential for physical harm. The transmittal of information to the appropriate licensing agency shall not relieve the adult protective services agency or local law enforcement agency or ombudsman program of the responsibility to continue its own investigation as required under applicable provisions of law. The information reported pursuant to this paragraph shall remain confidential and shall not be disclosed.

(c) A local law enforcement agency shall immediately, or as soon local practically possible, report by telephone to the long-term care ombudsman program when the abuse is alleged to have occurred in a long-term care facility or to the county adult protective services agency when it is alleged to have occurred anywhere else, and to the agency given responsibility for the investigation of cases of elder and dependent adult abuse every known or suspected instance of abuse of an elder or dependent adult. A local law enforcement agency shall also send a written report thereof within two working days of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

(d) A long-term care ombudsman coordinator may report the instance of abuse to the county adult protective services agency or to the local law enforcement agency for assistance in the investigation of the abuse if the victim gives his or her consent. A long-term care ombudsman program and the Licensing and Certification Division of the State Department of Health Services shall immediately report by telephone and in writing within two working days to the bureau any instance of neglect occurring in a health care facility, that has seriously harmed any patient or reasonably appears to present a serious threat to the health or physical well-being of a patient in that facility. If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or potential victim and the bureau and the reporting agency shall maintain the confidentiality of the report until the time at which the report becomes a matter of public record.

(e) When a county adult protective services agency, a long-term care ombudsman program, or a local law enforcement agency receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, that county adult protective services agency, long-term care ombudsman coordinator, or local law enforcement agency shall report the incident to the licensing agency by telephone as soon as possible.

(f) County adult protective services agencies, long-term care ombudsman programs, and local law enforcement agencies shall report the results of their investigations of referrals or reports of abuse to the respective referring or reporting agencies.

SEC. 21. Article 6 (commencing with Section 15650) is added to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 6. Investigation of Reports

15650. (a) Investigation of reports of known or suspected instances of abuse in long-term care facilities shall be the responsibility of the long-term care ombudsman program, for instances of physical and fiduciary abuse, the local law enforcement agency, and for instances of potential criminal neglect in a long-term health care facility, the long-term care ombudsman program and the bureau.

(b) Investigations of known or suspected instances of abuse outside of long-term care facilities shall be the responsibility of the county adult protective services agency and the local law enforcement agency unless another public agency is given responsibility for investigation in that jurisdiction.

(c) The investigative responsibilities set forth in this section are in addition to, and not in derogation of or substitution for, the

investigative and regulatory responsibilities of licensing agencies, such as the State Department of Social Services Community Care Licensing Division and the State Department of Health Services Licensing and Certification Division and their authorized representatives.

(d) Other public agencies involved in the investigation of abuse or advocacy of respective client populations, or both, include, but shall not be limited to, the State Department of Mental Health and the State Department of Developmental Services. Other public agencies shall conduct or assist in, or both, the investigation of reports of abuse of elder and dependent adults within their jurisdiction in conjunction with county adult protective services, local ombudsman programs and local law enforcement agencies.

(e) Each county adult protective services agency shall maintain an inventory of all public and private service agencies available to assist victims of abuse, as defined by Section 15610.07. This inventory shall be used to refer victims in the event that the county adult protective services agency cannot resolve the immediate needs of the victim, and to serve the victim on a long-term, followup basis. The intent of this section is to acknowledge that limited funds are available to resolve all suspected cases of abuse reported to a county adult protective services agency.

(f) Each local ombudsman program shall maintain an inventory of all public and private agencies available to assist long-term care residents who are victims of abuse, as defined by Section 15610.07. This inventory shall be used to refer cases of abuse in the event that another agency has jurisdiction over the resident, the abuse is verified and further investigation is needed by a law enforcement or licensing agency, or the program does not have sufficient resources to provide immediate assistance. The intent of this section is to acknowledge that ombudsman responsibility in abuse cases is to receive reports, determine the validity of reports, refer verified abuse cases to appropriate agencies for further action as necessary, and follow up to complete the required report information. Other ombudsman services shall be provided to the resident, as appropriate.

SEC. 22. Article 7 (commencing with Section 15653) is added to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 7. Interagency Coordination

15653. (a) Minimum guidelines for use by county adult protective services agencies in determining when an investigation of abuse is warranted shall be maintained by the State Department of Social Services in cooperation with representatives of county government, and in consultation with the Department of Aging, the Department of Justice, and other concerned state departments for use by county adult protective services agencies.

(b) Uniform guidelines for local law enforcement assistance with investigations of allegations of abuse to elders and dependent adults as developed by the Department of Justice in consultation with the department, the Department of Aging, and other concerned state and local agencies pursuant to Section 15640, as amended by Chapter 769 of the Statutes of 1986, shall remain in effect until modified. Consistent with these guidelines, county adult protective services agencies may seek local law enforcement assistance with investigations of allegations of abuse to elder and dependent adults.

15654. As described in subdivision (h) of Section 12528 of the Government Code, the bureau shall offer training programs to local law enforcement and prosecutorial personnel in investigating and prosecuting crimes against elders and dependent adults, and to the State Department of Health Services, the State Department of Social Services, the county adult protective services agencies and to the long-term care ombudsman program in evaluating and documenting criminal abuse against elders and dependent adults.

SEC. 23. Article 8 (commencing with Section 15656) is added to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 8. Prosecution of Elder and Dependent Adult Abuse Cases

15656. (a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts unjustifiable physical pain or mental suffering upon him or her, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts unjustifiable physical pain or mental suffering on him or her, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health may be endangered, is guilty of a misdemeanor.

(c) Any caretaker of an elder or a dependent adult who violates any provision of law prescribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in the county jail not exceeding one year, or in the

state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one year, or by both that imprisonment and fine, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(d) As used in this section, "caretaker" means any person who has the care, custody, or control of or who stands in a position of trust with, an elder or a dependent adult.

(e) Conduct covered in subdivision (b) of Section 15610.57 shall not be subject to this section.

SEC. 23.5. Section 15657.1 of the Welfare and Institutions Code is amended to read:

15657.1. The award of attorney's fees pursuant to subdivision (a) of Section 15657 shall be based on all factors relevant to the value of the services rendered, including, but not limited to, the factors set forth in Rule 4-200 of the Rules of Professional Conduct of the State Bar of California, and all of the following:

(a) The value of the abuse-related litigation in terms of the quality of life of the elder or dependent adult, and the results obtained.

(b) Whether the defendant took reasonable and timely steps to determine the likelihood and extent of liability.

(c) The reasonableness and timeliness of any written offer in compromise made by a party to the action.

SEC. 24. Article 9 (commencing with Section 15658) is added to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 9. Reporting Forms

15658. (a) (1) The written abuse reports required for the reporting of abuse, as defined in this chapter, shall be submitted on forms adopted by the State Department of Social Services after consultation with representatives of the various law enforcement agencies, the Department of Aging, the State Department of Developmental Services, the State Department of Mental Health, the bureau, professional medical and nursing agencies, hospital associations and county welfare departments. These reporting forms shall be distributed by the county adult protective services agencies and the long-term care ombudsman programs. This reporting form may also be used for documenting the telephone report of a known or suspected instance of abuse of an elder or dependent adult by the county adult protective services agency, local ombudsman program, and local law enforcement agencies.

(2) The forms required by this section shall contain the following items:

(A) The name, address, telephone number, and occupation of the person reporting.

(B) The name and address of the victim.

(C) The date, time, and place of the incident.

(D) Other details, including the reporter's observations and beliefs concerning the incident.

(E) Any statement relating to the incident made by the victim.

(F) The name of any individuals believed to have knowledge of the incident.

(G) The name of the individuals believed to be responsible for the incident and their connection to the victim.

(b) (1) Each county adult protective services agency shall report to the State Department of Social Services monthly on the reports received pursuant to this chapter. The reports shall be made on forms adopted by the department. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the number of persons abused, the type of abuse sustained, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

(2) The county's report to the department shall not include reports it receives from the long-term care ombudsman program pursuant to subdivision (c).

(3) The department shall refer to the bureau monthly data summaries of the reports of elder and dependent adult abuse, neglect, and exploitation, and other abuse it receives from county adult protective services agencies.

(c) Each long-term care ombudsman program shall report to the Office of the Long-Term Care Ombudsman of the Department of Aging monthly on the reports it receives pursuant to this chapter with a copy sent to the county adult protective services agency. The office of the State Ombudsman shall submit a summarized quarterly report to the department based on the monthly reports submitted by local long-term care ombudsman programs. The reports shall be on forms adopted by the department and the office of the State Ombudsman. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the numbers of persons abused, the type of abuse, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

SEC. 25. Article 10 (commencing with Section 15659) is added to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 10. Employee Statement

15659. (a) Any person who enters into employment on or after January 1, 1995, as a care custodian, health practitioner, or with an adult protective services agency or a local law enforcement agency, prior to commencing his or her employment and as a prerequisite to that employment shall sign a statement on a form, that shall be provided by the prospective employer, to the effect that he or she

has knowledge of Section 15630 and will comply with its provisions. The signed statement shall be retained by the employer.

(b) Agencies or facilities that employ persons required to make reports pursuant to Section 15630, who were employed prior to January 1, 1995, shall inform those persons of their responsibility to make reports by delivering to them a copy of the statement specified in subdivision (a).

(c) The cost of printing, distribution, and filing of these statements shall be borne by the employer.

(d) On and after January 1, 1995, when a person is issued a state license or certificate to engage in a profession or occupation the members of which are required to make a report pursuant to Section 15630, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person.

(e) As an alternative to the procedure required by subdivision (d), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1995.

(f) The retention of statements required by subdivision (a), and the delivery of statements required by subdivision (b) shall be the full extent of the employer's duty pursuant to this section. The failure of any employee or other person associated with the employer to report physical abuse of elders or dependent adults or otherwise meet the requirements of this chapter shall be the sole responsibility of that person. The employer or facility shall incur no civil or other liability for the failure of these persons to comply with the requirements of this chapter.

SEC. 26. The heading of Article 6 (commencing with Section 15660) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code is amended and renumbered to read:

Article 11. Criminal Record Reporting

SEC. 27. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, except as provided in Section 7 of this act, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

No reimbursement is required by Section 7 of this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty

for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 595

An act to add Section 827.3 to the Insurance Code, relating to insurers.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 827.3 is added to the Insurance Code, to read:

827.3. (a) As used in this section, the term "insurer" means an insurer which is domestic and admitted.

(b) The transactions of an insurer set out in subdivisions (c) and (d) are exempt from Section 827 if they meet all of the following requirements:

(1) They are not accompanied by an advertisement and no selling expenses have been given, paid, or incurred in connection therewith.

(2) No consideration has been given, paid, or incurred in connection with them.

(3) Within 30 days after the transaction, the insurer notifies the commissioner in writing of its occurrence. The notice shall describe the transaction, including the transaction date, the number and par value of shares issued, and the purpose of the transaction. The notice shall be executed under penalty of perjury.

(c) Par value increases resulting from a transfer of gross paid-in surplus to capital.

(d) Shares issued or distributed by an insurer as dividends to existing holders of shares of the insurer, on a pro rata basis according to the shares previously held by each holder, provided the new shares are of the same class and par value and have the same rights, preferences, privileges, and restrictions as the outstanding shares.

(e) Any transfer of surplus to paid-up capital pursuant to subsection (d) shall not be deemed consideration for purposes of this section.

(f) Notwithstanding this section, the applicable notice provisions, contained in subdivision (d) of Section 1215.4, shall apply to those transactions set forth in subdivision (d).

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district

will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 596

An act to amend Section 3042 of the Family Code, relating to family law.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 3042 of the Family Code is amended to read:

3042. (a) If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to the wishes of the child in making an order granting or modifying custody.

(b) In addition to the requirements of subdivision (b) of Section 765 of the Evidence Code, the court shall control the examination of the child witness so as to protect the best interests of the child. The court may preclude the calling of the child as a witness where the best interests of the child so dictates and may provide alternative means of obtaining information regarding the child's preferences.

CHAPTER 597

An act to amend Section 65850 of the Government Code, relating to adult entertainment.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 65850 of the Government Code is amended to read:

65850. The legislative body of any county or city may, pursuant to this chapter, adopt ordinances that do any of the following:

(a) Regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and

other purposes.

(b) Regulate signs and billboards.

(c) Regulate all of the following:

(1) The location, height, bulk, number of stories, and size of buildings and structures.

(2) The size and use of lots, yards, courts, and other open spaces.

(3) The percentage of a lot which may be occupied by a building or structure.

(4) The intensity of land use.

(d) Establish requirements for offstreet parking and loading.

(e) Establish and maintain building setback lines.

(f) Create civic districts around civic centers, public parks, public buildings, or public grounds, and establish regulations for those civic districts.

(g) (1) Regulate, pursuant to a content neutral zoning ordinance, the time, place, and manner of operation of sexually oriented businesses, when the ordinance is designed to serve a substantial governmental interest, does not unreasonably limit alternative avenues of communication, and is based on narrow, objective, and definite standards. The legislative body is entitled to rely on the experiences of other counties and cities and on the findings of court cases in establishing the reasonableness of the ordinance and its relevance to the specific problems it addresses, including the harmful secondary effects the business may have on the community and its proximity to churches, schools, residences, establishments dispensing alcohol, and other sexually oriented businesses.

(2) For purposes of this section, a sexually oriented business is one whose primary purpose is the sale or display of matter that, because of its sexually explicit nature, may, pursuant to state law or local regulatory authority, be offered only to persons over the age of 18.

(3) This subdivision does not apply to a theater, concert hall, or similar establishment that is primarily devoted to theatrical performances.

CHAPTER 598

An act to add Chapter 6 (commencing with Section 1950) to Division 2.5 of the Streets and Highways Code, and to amend Section 21716 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Chapter 6 (commencing with Section 1950) is added to Division 2.5 of the Streets and Highways Code, to read:

CHAPTER 6. GOLF CART TRANSPORTATION PROGRAM

1950. It is the intent of the Legislature, in enacting this chapter, to authorize the establishment of a golf cart transportation program for the Del Webb Specific Plan area in the City of Roseville. It is the further intent of the Legislature that this transportation system be designed and developed to best serve the functional travel needs of the Del Webb Specific Plan, to have the physical safety of the golf cart driver's person and property as a major planning component, and to have the capacity to accommodate golf cart drivers of every legal age and range of skills.

1951. The following definitions apply to this chapter:

(a) "City" means the City of Roseville.

(b) "Plan area" means the Del Webb Specific Plan in the City of Roseville.

(c) "Golf cart" means a motor vehicle having not less than three wheels in contact with the ground and unladen weight less than 1,300 pounds which is designed to be and is operated at not more than 25 miles per hour and is designated to carry golf equipment and not more than two persons, including the driver.

(d) "Golf cart lanes" means all publicly-owned facilities that provide for golf cart travel including roadways designated by signs or permanent markings which are shared with pedestrians, bicyclists, and other motorists in the plan area.

1953. The city may, by ordinance or resolution, adopt a golf cart transportation plan. No transportation plan may be adopted which has not received a prior review and the comments of the appropriate transportation planning agency designated under subdivision (a) or (b) of Section 29532 of the Government Code.

1955. The transportation plan shall include, but is not limited to, all of the following elements:

(a) Route selection, which includes a finding that the route will accommodate golf carts without an adverse impact upon traffic safety, and will consider, among other things, the travel needs of commuters and other users.

(b) Transportation interfacing, which shall include, but not be limited to, coordination with other modes of transportation so that a golf cart driver may employ multiple modes of transportation in reaching a destination in the plan area.

(c) Citizens and community involvement in planning.

(d) Flexibility and coordination with long-range transportation planning.

(e) Provision for golf cart related facilities including, but not limited to, special access points and golf cart crossings.

(f) Provisions for parking facilities, including, but not limited to, community commercial centers, golf courses, public areas, parks, and other destination locations.

(g) Provisions for special paving, road markings, signage and striping for golf cart travel lanes, road crossings, parking, and

circulation.

(h) No adopted transportation plan shall include the establishment of a golf cart lane along, or that cross, a state highway unless authorized by the department.

1957. If the city adopts a golf cart transportation plan, it shall do both of the following:

(a) Establish minimum general design criteria for the development, planning, and construction of separated golf cart lanes, including, but not limited to, the design speed of the facility, the space requirements of the golf cart, and roadway design criteria.

(b) In cooperation with the department, establish uniform specifications and symbols for signs, markers, and traffic control devices to control golf cart traffic, to warn of dangerous conditions, obstacles, or hazards; to designate the right-of-way as between golf carts and other vehicles; to state the nature and destination of the golf cart lane; and to warn pedestrians, bicyclists, and motorists of the presence of golf cart traffic.

1959. The city may do the following:

(a) Acquire, by dedication, purchase, or condemnation, real property, including easements or rights-of-way, to establish golf cart lanes.

(b) Establish a golf cart transportation plan as authorized by this chapter.

1961. The city shall adopt all of the following as part of the golf cart transportation plan:

(a) Minimum design criteria for golf carts, which may include, but not be limited to, headlights, turn signals, safety devices, mirrors, brake lights, windshields, and other devices. The criteria shall include requirements for seatbelts and a covered passenger compartment.

(b) A permit process for golf carts that requires permitted golf carts to meet minimum design criteria adopted pursuant to subdivision (a). The permit process may include, but not be limited to, permit posting, permit renewal, operator education, and other related matters.

(c) Minimum safety criteria for golf cart operators, including, but not limited to, requirements relating to golf cart maintenance and golf cart safety. Operators shall be required to possess a valid California driver's license and to comply with the financial responsibility requirements established pursuant to Chapter 1 (commencing with Section 16000) of Division 7.

(d) (1) Restrictions limiting the operation of golf carts to separated golf cart lanes on those roadways identified in the transportation plan, and allowing only those golf carts that have been retrofitted with the safety equipment specified in the plan to be operated on separated golf cart lanes of approved roadways in the plan area.

(2) Any person operating a golf cart in the plan area in violation of this subdivision is guilty of an infraction punishable by a fine not

exceeding one hundred dollars ($100).

1963. On January 1, 1997, and on January 1, 1999, the city shall transmit a report to the Legislature concerning any accidents involving, or related to the operation of, golf carts participating in the program, any violations of city ordinances involving golf carts, and a summary of new actions taken by the city in the previous year concerning the program.

SEC. 2. Section 21716 of the Vehicle Code, as amended by Section 2 of Chapter 44 of the Statutes of 1992, is amended to read:

21716. Except as provided in Section 21115.1, Chapter 5 (commencing with Section 1930) of Division 2.5 of the Streets and Highways Code, and Chapter 6 (commencing with Section 1950) of Division 2.5 of the Streets and Highways Code, no person shall operate a golf cart on any highway except in a speed zone of 25 miles per hour or less.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 3. Section 21716 of the Vehicle Code, as added by Section 3 of Chapter 44 of the Statutes of 1992, is amended to read:

21716. Except as provided in Section 21115.1, and Chapter 6 (commencing with Section 1950) of Division 2.5 of the Streets and Highways Code, no person shall operate a golf cart on any highway except in a speed zone of 25 miles per hour or less.

This section shall become operative on January 1, 1998.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 599

An act to amend Section 300.5 of the Health and Safety Code, to amend Sections 273.8, 273.81, 273.82, 273.83, 273.84, 273.85, and 273.87 of, and to add Section 273.88 to, the Penal Code, and to amend Section 3 of Chapter 140 of the Statutes of 1994, relating to domestic violence, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 300.5 of the Health and Safety Code is amended to read:

300.5. (a) The Maternal and Child Health Branch of the State Department of Health Services shall administer a comprehensive shelter-based services grant program to battered women's shelters pursuant to this section.

(b) The Maternal and Child Health Branch shall administer grants to battered women's shelters that propose to expand existing services or create new services, and to establish new battered women's shelters to provide services, in any of the following four areas:

(1) Emergency shelter to women and their children escaping violent family situations.

(2) Transitional housing programs to help women and their children find housing and jobs so that they are not forced to choose between returning to a violent relationship or becoming homeless. The programs may offer up to 18 months of housing, case management, job training and placement, counseling, support groups, and classes in parenting and family budgeting.

(3) Legal and other types of advocacy and representation to help women and their children pursue the appropriate legal options.

(4) Other support services for battered women identified by the advisory council, including, but not limited to, creative and innovative service approaches such as community response teams.

(c) In implementing the grant program pursuant to this section, the State Department of Health Services shall consult with an advisory council, to remain in existence until January 1, 1996. The council shall be composed of not to exceed 13 voting members and two nonvoting members appointed as follows:

(1) Seven members appointed by the Governor.

(2) Three members appointed by the Speaker of the Assembly.

(3) Three members appointed by the Senate Committee on Rules.

(4) Two nonvoting ex officio members who shall be Members of the Legislature, one appointed by the Speaker of the Assembly and one appointed by the Senate Committee on Rules. Any Member of the Legislature appointed to the council shall meet with, and participate in the activities of, the council to the extent that participation is not incompatible with his or her position as a Member of the Legislature.

The membership of the council shall consist of domestic violence advocates, battered women service providers, and representatives of women's organizations, law enforcement, and other groups involved with domestic violence. At least one-half of the council membership

shall consist of domestic violence advocates or battered women service providers from organizations such as the California Alliance Against Domestic Violence.

It is the intent of the Legislature that the council membership reflect the ethnic, racial, cultural, and geographic diversity of the state.

(d) The department shall collaborate closely with the council in the development of funding priorities, the framing of the Request for Proposals, and the solicitation of proposals.

(e) Administrative costs of the State Department of Health Services incurred pursuant to the grant program shall not exceed 5 percent of the funds allocated for the program.

(f) The shelters funded pursuant to this section shall reflect the ethnic, racial, economic, cultural, and geographic diversity of the state. It is the intent of the Legislature that services funded by this program include services in underserved and minority communities.

(g) As a condition of receiving funding pursuant to this section, battered women's shelters shall provide matching funds or in-kind contributions equivalent to 10 percent of the grant they would receive. The matching funds or in-kind contributions may come from other governmental or private sources.

(h) The State Department of Health Services shall issue a Request for Proposals and shall encumber the funds or complete negotiations for agreements no later than May 1, 1995.

SEC. 2. Section 273.8 of the Penal Code is amended to read:

273.8. The Legislature hereby finds that spousal abusers present a clear and present danger to the mental and physical well-being of the citizens of the State of California. The Legislature further finds that the concept of vertical prosecution, in which a specially trained deputy district attorney, deputy city attorney, or prosecution unit is assigned to a case after arraignment and continuing to its completion, is a proven way of demonstrably increasing the likelihood of convicting spousal abusers and ensuring appropriate sentences for those offenders. In enacting this chapter, the Legislature intends to support increased efforts by district attorneys' and city attorneys' offices to prosecute spousal abusers through organizational and operational techniques that have already proven their effectiveness in selected cities and counties in this and other states.

SEC. 3. Section 273.81 of the Penal Code is amended to read:

273.81. (a) There is hereby established in the Department of Justice a program of financial and technical assistance for district attorneys' or city attorneys' offices, designated the Spousal Abuser Prosecution Program. All funds appropriated to the Department of Justice for the purposes of this chapter shall be administered and disbursed by the Attorney General, and shall to the greatest extent feasible, be coordinated or consolidated with any federal or local funds that may be made available for these purposes.

The Department of Justice shall establish guidelines for the

provision of grant awards to proposed and existing programs prior to the allocation of funds under this chapter. These guidelines shall contain the criteria for the selection of agencies to receive funding and the terms and conditions upon which the Department of Justice is prepared to offer grants pursuant to statutory authority. The guidelines shall not constitute rules, regulations, orders, or standards of general application.

(b) The Attorney General may allocate and award funds to cities or counties, or both, in which spousal abuser prosecution units are established or are proposed to be established in substantial compliance with the policies and criteria set forth in this chapter.

(c) The allocation and award of funds shall be made upon application executed by the county's district attorney or by the city's attorney and approved by the county board of supervisors or by the city council. Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the California Spousal Abuser Prosecution Program, be made available to support the prosecution of spousal abuser cases. Local grant awards made under this program shall not be subject to review as specified in Section 10295 of the Public Contract Code.

(d) Local government recipients shall provide 20 percent matching funds for every grant awarded under this program.

SEC. 4. Section 273.82 of the Penal Code is amended to read:

273.82. Spousal abuser prosecution units receiving funds under this chapter shall concentrate enhanced prosecution efforts and resources upon individuals identified under selection criteria set forth in Section 273.83. Enhanced prosecution efforts and resources shall include, but not be limited to, all of the following:

(a) (1) Vertical prosecutorial representation, whereby the prosecutor who, or prosecution unit that, makes all major court appearances on that particular case through its conclusion, including bail evaluation, preliminary hearing, significant law and motion litigation, trial, and sentencing.

(2) Vertical counselor representation, whereby a trained domestic violence counselor maintains liaison from initial court appearances through the case's conclusion, including the sentencing phase.

(b) The assignment of highly qualified investigators and prosecutors to spousal abuser cases. "Highly qualified" for the purposes of this chapter means any of the following:

(1) Individuals with one year of experience in the investigation and prosecution of felonies.

(2) Individuals with at least two years of experience in the investigation and prosecution of misdemeanors.

(3) Individuals who have attended a program providing domestic violence training as approved by the Office of Criminal Justice Planning or the Department of Justice.

(c) A significant reduction of caseloads for investigators and prosecutors assigned to spousal abuser cases.

(d) Coordination with local rape victim counseling centers, spousal abuse services programs, and victim-witness assistance programs. That coordination shall include, but not be limited to: referrals of individuals to receive client services; participation in local training programs; membership and participation in local task forces established to improve communication between criminal justice system agencies and community service agencies; and cooperating with individuals serving as liaison representatives of local rape victim counseling centers, spousal abuse victim programs, and victim-witness assistance programs.

SEC. 5. Section 273.83 of the Penal Code is amended to read:

273.83. (a) An individual shall be the subject of a spousal abuser prosecution effort who is under arrest for any act or omission described in subdivisions (a) and (b) of Section 13700.

(b) In applying the spousal abuser selection criteria set forth in subdivision (a), a district attorney or city attorney shall not reject cases for filing exclusively on the basis that there is a family or personal relationship between the victim and the alleged offender.

(c) In exercising the prosecutorial discretion granted by Section 273.85, the district attorney or city attorney shall consider the number and seriousness of the offenses currently charged against the defendant.

SEC. 6. Section 273.84 of the Penal Code is amended to read:

273.84. Subject to the provisions of Chapter 2.6 (commencing with Section 1000.6) of Title 6 of Part 2, each district attorney's or city attorney's office establishing a spousal abuser prosecution unit and receiving state support under this chapter shall adopt and pursue the following policies for spousal abuser cases:

(a) All reasonable prosecutorial efforts shall be made to resist the pretrial release of a charged defendant meeting spousal abuser selection criteria.

(b) All reasonable prosecutorial efforts shall be made to persuade the court to impose the most severe authorized sentence upon a person convicted after prosecution as a spousal abuser. In the prosecution of an intrafamily sexual abuse case, discretion may be exercised as to the type and nature of sentence recommended to the court.

(c) All reasonable prosecutorial efforts shall be made to reduce the time between arrest and disposition of charge against an individual meeting spousal abuser criteria.

SEC. 7. Section 273.85 of the Penal Code is amended to read:

273.85. (a) The selection criteria set forth in Section 273.84 shall be adhered to for each spousal abuser case unless, in the reasonable exercise of prosecutor's discretion, extraordinary circumstances require departure from those policies in order to promote the general purposes and intent of this chapter.

(b) Each district attorney's and city attorney's office establishing a spousal abuser prosecution unit and receiving state support under this chapter shall submit the following information, on a quarterly

basis, to the Department of Justice:

(1) The number of spousal abuser cases referred to the district attorney's or city attorney's office for possible filing.

(2) The number of spousal abuser cases filed for prosecution.

(3) The number of spousal abuser cases taken to trial.

(4) The number of spousal abuser cases tried that resulted in conviction.

SEC. 8. Section 273.87 of the Penal Code is amended to read:

273.87. The Department of Justice is encouraged to utilize Federal Victims of Crimes Act (VOCA) funds or any other federal funds that may become available in order to implement this chapter.

SEC. 9. Section 273.88 is added to the Penal Code, to read:

273.88. Administrative costs incurred by the Department of Justice pursuant to the Spousal Abuser Prosecution Program shall not exceed 5 percent of the total funds allocated for the program.

SEC. 10. Section 3 of Chapter 140 of the Statutes of 1994 is amended to read:

Sec. 3. (a) (1) The sum of three million five hundred thousand dollars ($3,500,000) is appropriated in the Budget Act of 1994 to the Department of Justice to implement Spousal Abuser Prosecution Program pursuant to Chapter 2.5 (commencing with Section 273.8) of Title 9 of Part 1 of the Penal Code. This program shall provide financial and technical assistance to prosecutors to enhance the prosecution of domestic violence cases by expanding existing domestic violence prosecution units or by creating new domestic violence prosecution units.

(2) It is the intent of the Legislature that the sum of three million five hundred thousand dollars ($3,500,000) be appropriated from the General Fund in the Budget Act of 1995 to the Department of Justice for the 1995–96 fiscal year for the purposes specified in paragraph (1).

(b) (1) The sum of eleven million five hundred thousand dollars ($11,500,000) that is appropriated in the Budget Act of 1994 and made available for expenditure for purposes of this act shall be distributed in the following manner:

(A) Five million seven hundred fifty thousand dollars ($5,750,000) to the State Department of Health Services for purposes of a comprehensive shelter-based services grant program that shall be administered by the Maternal and Child Health Branch of the department pursuant to Section 300.5 of the Health and Safety Code, as added by this act.

(B) Five million seven hundred fifty thousand dollars ($5,750,000) to the State Department of Health Services to augment existing battered women's shelters currently funded by the state. These funds shall be distributed for the purposes of Section 300.5 of the Health and Safety Code by October 15, 1994, in proportion to the percentage of the total state funding that each shelter received for the 1993–94 or the 1994–95 fiscal year, at the discretion of the department, and may be expended by the shelters without regard to

fiscal year.

(2) It is the intent of the Legislature that the sum of eleven million five hundred thousand dollars ($11,500,000) be appropriated from the General Fund in the Budget Act of 1995 to the State Department of Health Services for the 1995–96 fiscal year for the purposes of a comprehensive shelter-based services grant program pursuant to Section 300.5 of the Health and Safety Code.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that necessary changes in the funding and administration of programs for the protection of battered women may be implemented at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 600

An act to add Section 599f to the Penal Code, relating to animals.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 599f is added to the Penal Code, to read:

599f. (a) No slaughterhouse that is not inspected by the United States Department of Agriculture, stockyard, or auction shall buy, sell, or receive a nonambulatory animal.

(b) No slaughterhouse, stockyard, auction, market agency, or dealer shall hold a nonambulatory animal without taking immediate action to humanely euthanize the animal or remove the animal from the premises.

(c) While in transit or on the premises of a stockyard, auction, market agency, dealer, or slaughterhouse, a nonambulatory animal may not be dragged at any time, or pushed with equipment at any time, but shall be moved with a sling or on a stoneboat or other sled-like or wheeled conveyance.

(d) A violation of this section is a misdemeanor.

(e) As used in this section, "nonambulatory" means unable to stand and walk without assistance.

(f) As used in this section, "animal" means live cattle, swine, sheep, or goats.

(g) As used in this section, "humanely euthanized" means to kill by a mechanical, chemical, or electrical method that rapidly and effectively renders the animal insensitive to pain.

SEC. 2. If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not

affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 601

An act to amend Section 62750 of, to add Sections 62062.1, 62752, 62753, 62754, 62755, and 62756 to, and to repeal and add Section 62751 of, the Food and Agricultural Code, relating to food.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 62062.1 is added to the Food and Agricultural Code, to read:

62062.1. Any designation of a class 1 price by any method or formula that is used to develop class 1 prices paid to producers in the various marketing areas, shall provide, on a calendar year basis, a statewide weighted average minimum price level for a hundred weight of milk testing 3.5 fat and 8.7 solids not fat that is in reasonable relationship with minimum class 1 milk prices paid to producers in contiguous states. If the statewide weighted average class 1 prices paid to producers are not in a reasonable relationship with the class 1 prices paid to producers in contiguous states, the secretary shall immediately hold a hearing to consider adjustments to the class 1 prices.

SEC. 1.5. Section 62750 of the Food and Agricultural Code is amended to read:

62750. Notwithstanding any provision of Chapter 3 (commencing with Section 62700) in conflict with this section or any pooling plan for market milk in effect under that chapter, effective January 1, 1994, each producer shall be paid the amounts determined in accordance with this section for his or her pool quota production and for all production in excess of his or her pool quota.

(a) For all milk fat, whether or not equal to his or her pool quota, an amount determined by dividing the value of all milk fat in the

pool by the amount of milk fat produced.

(b) Transportation allowances that are provided for in the pooling plan shall not be deducted from the quota milk of any region, but shall be deducted from the total solids not fat pool revenue before any price is determined for quota and nonquota solids not fat.

(c) Regional quota adjusters shall continue to be subtracted from the quota price in the established areas as specified in the pooling plan for market milk. However, the hundredweight price specified shall be converted to a solids not fat equivalent value, and the adjustments for the effect of those regional quota adjusters shall be applied to the solids not fat revenue.

(d) After taking into consideration the effect of the regional quota adjusters, the solids not fat announced quota price for those areas in which there is no regional quota adjuster shall be nineteen and one-half cents ($0.195) per pound greater than the announced solids not fat price for all milk produced in excess of pool quota.

SEC. 2. Section 62751 of the Food and Agricultural Code is repealed.

SEC. 3. Section 62751 is added to the Food and Agricultural Code, to read:

62751. Except as provided in Section 62756, this chapter shall remain operative until the secretary certifies to the Secretary of State that producers have voted in a referendum to suspend the operation of this chapter.

SEC. 4. Section 62752 is added to the Food and Agricultural Code, to read:

62752. The secretary may hold a public hearing at any time to consider whether this chapter shall be suspended, and shall hold a public hearing to review a petition requesting the suspension of this chapter signed by not less than 25 percent of the producers who produced not less than 25 percent of the total amount of fluid milk produced in this state during the preceding calendar month.

SEC. 5. Section 62753 is added to the Food and Agricultural Code, to read:

62753. The secretary shall establish a period of 60 days in which to conduct the referendum. The secretary may extend the referendum period an additional 30 days if he or she determines that the additional time is needed to adequately conduct the referendum, and may prescribe additional procedures necessary to conduct the referendum.

SEC. 6. Section 62754 is added to the Food and Agricultural Code, to read:

62754. (a) Each producer shall have one vote and the vote shall be individually cast in order to prevent block voting. The secretary shall prepare a ballot. The ballot form shall be substantially as follows:

Ballot

Shall Chapter 3.5 (commencing with Section 62750) of Part 3 of Division 21 of the Food and Agricultural Code be continued in

effect? Yes No

(b) In addition, the ballot shall include a statement of the voter's total production during the calendar month next preceding the month of the commencement of the referendum period, where and to whom that production was sold or otherwise disposed, and the producer's name and address and pooling numbers.

SEC. 7. Section 62755 is added to the Food and Agricultural Code, to read:

62755. (a) The secretary shall find that producers have assented to the continued operation of this chapter if the secretary finds on a statewide basis that not less than 51 percent of the total number of eligible producers in the state have voted in the referendum and that 51 percent or more of the total number of eligible producers who voted in the referendum and who produced 51 percent or more of the total amount of fluid milk produced in the state during the calendar month next preceding the month of the commencement of the referendum period by all producers who voted in the referendum, approve the continued operation of this chapter.

(b) If the secretary finds that a vote favorable to the continued operation of this chapter has not been given, the secretary shall so certify to the Secretary of State and shall declare this chapter inoperative.

(c) The secretary may reveal the names of producers whose votes have been received to both proponents and opponents of the continued operation of this chapter. However, whether individual producers voted for or against the continued operation of this chapter shall be kept confidential.

SEC. 8. Section 62756 is added to the Food and Agricultural Code, to read:

62756. (a) If the continued operation of this chapter is not approved, the secretary shall continue in operation the pooling plan in effect on December 31, 1993.

(b) Notwithstanding Section 62751, this section shall remain operative notwithstanding a vote by producers to suspend the operation of this chapter.

CHAPTER 602

An act relating to the Martin Luther King, Jr. Freedom Center.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. The Legislature hereby finds and declares that a joint powers agreement will be entered into by the City of Oakland and the East Bay Regional Park District in order to establish and operate the Martin Luther King, Jr. Freedom Center within the Martin Luther King, Jr. Shoreline Park in Oakland, California. The general theme of the center shall be Dr. King's message of nonviolence and universal brotherhood and sisterhood.

The center shall serve as a regional resource for the study and teaching of nonviolence and conflict resolution. The center shall also provide at-risk youth from the surrounding communities with various recreational opportunities.

The center shall include a library, museum, auditorium, and general resource center. The center shall utilize volunteers from community-based organizations for program administration of the center.

SEC. 2. Notwithstanding any other laws to the contrary, the Martin Luther King, Jr. Freedom Center specified in Section 1 of this act shall be an eligible project for construction and development grants from any funds appropriated for the purposes of this act through the annual Budget Act, any appropriate bond act, or any other legislation that provides local assistance grants to cities, counties, and districts for park, recreational, and community facilities. The center shall also be eligible for local assistance grants pursuant to the Roberti-Z'Berg-Harris Urban Open-Space and Recreational Program Act (Chapter 3.2 (commencing with Section 5620) of Division 5 of the Public Resources Code).

CHAPTER 603

An act to add Section 22455.5 to the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 22455.5 is added to the Education Code, to read:

22455.5. (a) The Legislature finds and declares that the federal Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) requires all public employers to provide their employees with either social security coverage or membership in a qualified retirement plan.

(b) Employing agencies shall make available criteria for membership, including optional membership, in a timely manner to all certificated employees and shall inform part-time and substitute certificated employees, within 30 days of hire date, or by March 1, 1995, whichever is later, that they may elect membership in the system at any time while employed. Written acknowledgment by the employee shall be maintained in employer files on a form provided by this system.

(c) Employing agencies shall be liable to the system for employee and employer contributions and interest from the date of hire, or March 1, 1995, whichever is later, in addition to system administrative and audit costs, if an audit or a member's complaint reveals noncompliance. However, no employer shall be liable for employee contributions for service performed prior to January 1, 1995.

CHAPTER 604

An act to amend Section 7375 of the Labor Code, relating to occupational safety and health.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 7375 of the Labor Code is amended to read:

7375. (a) The division shall adopt regulations for the certification of all cranes and derricks used in lifting service, exceeding three tons rated capacity. Tower cranes shall be certified annually and whenever they are erected on a new site.

(b) These regulations shall specify the procedure for licensing the certificating agencies or agents to conduct certification inspections, and shall establish specific criteria for licensure as a certifier, including a written examination.

(c) No individual may certify a crane in which the individual or his or her employer has a direct or indirect financial interest, nor may an individual certify equipment that belongs to his or her employer. An individual may not certify equipment or devices that he or she has manufactured or helped to manufacture, if the equipment is owned by his or her employer. However, this subdivision shall not prohibit any of the following:

(1) The licensure of certifiers who are employed by insurance carriers that insure the specific crane.

(2) Except with respect to certification of tower cranes, the licensure of certifiers who are employed by an electrical, gas, or telephone corporation, as defined in Sections 218, 222, and 234, respectively, of the Public Utilities Code, or a municipal utility serving a city having a population of 3,000,000 or more, that is issued a certificate of self-insurance pursuant to Article 3 (commencing with Section 16050) of Chapter 1 of Division 7 of the Vehicle Code and that is a self-insured employer under Article 1 (commencing with Section 3700) of Chapter 4 of Division 4 of this code.

(d) The certificating agency shall attest that it tested or examined the device or equipment and found it to meet the requirements of the division.

(e) The certificating agency shall notify the division of any deficiencies found during the crane certification inspection. A certificate shall not be issued until all deficiencies are corrected.

CHAPTER 605

An act to amend Sections 32510, 32515, and 32534 of the Public Resources Code, and to amend Sections 12260 and 12273 of the Water Code, relating to water.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 32510 of the Public Resources Code is amended to read:

32510. The San Joaquin River Conservancy is hereby established in the Resources Agency to acquire and manage public lands within the San Joaquin River Parkway, which shall consist of the San Joaquin River and approximately 5,900 acres on both sides of the river between Friant Dam and the Highway 99 crossing. Approximately 1,900 acres of the parkway shall be located in Madera County and 4,000 acres in Fresno County, of which approximately 1,250 acres are already in public ownership. The conservancy shall acquire and manage these lands in the parkway to provide a harmonious combination of low-impact recreational and educational uses and wildlife protection through the preservation of the San Joaquin River, existing publicly owned lands, the wildlife corridor, and natural reserves.

SEC. 2. Section 32515 of the Public Resources Code is amended to read:

32515. (a) The governing board of the conservancy shall consist of seven voting members and six ex officio, nonvoting members.

(b) The seven voting members of the board shall consist of the following:

(1) One member of the Board of Supervisors of Fresno County appointed by a majority of the members of that board.

(2) The mayor or a city council member designated by the Mayor of the City of Fresno.

(3) One member of the Board of Supervisors of Madera County appointed by a majority of the members of that board.

(4) The mayor or a city council member designated by the Mayor of the City of Madera.

(5) (A) One resident of Fresno County appointed by the Board of Supervisors of Fresno County from a list submitted by environmental organizations within that county. The board of supervisors may establish additional criteria for this appointment.

(B) One resident of Madera County appointed by the County Board of Supervisors of Madera County who is a property owner of San Joaquin River bottom. The board of supervisors may establish additional criteria for this appointment.

(C) Fresno County and Madera County shall rotate appointments pursuant to this paragraph so that each alternative time Madera County shall appoint a resident from a list submitted by environmental organizations within the county and Fresno County shall appoint the property owner.

(6) One resident of the City of Fresno appointed by the Fresno City Council. The city council may establish criteria for this appointment.

(c) The six ex officio, nonvoting members consist of the following officers or an employee of each agency designated annually by that officer to represent the office:

(1) The General Manager of the Fresno Metropolitan Flood Control District.

(2) The General Manager of the Madera Irrigation District.

(3) The Director of Fish and Game or a member of his or her executive staff designated by the director.

(4) The Executive Director of the Wildlife Conservation Board or a member of his or her executive staff designated by the executive director.

(5) The Director of Parks and Recreation or a member of his or her executive staff designated by the director.

(6) The Secretary of the Resources Agency or a member of his or her executive staff designated by the secretary.

SEC. 3. Section 32534 of the Public Resources Code is amended to read:

32534. The conservancy shall administer any funds appropriated to it and any revenue generated by member agencies for the parkway and contributed to the conservancy, and may expend those funds for capital improvements, land acquisition, or support of the conservancy's operations. Subject to Section 11005 of the Government Code, the conservancy may also accept any revenue, money, grants, goods, or services contributed to the conservancy by any public agency, private entity, or person, and, upon receipt, may

expend any such revenue, money, or grants for capital improvements, land acquisitions, or support of the conservancy's operations.

SEC. 4. Section 12260 of the Water Code is amended to read:

12260. The Legislature hereby finds and declares all of the following:

(a) The San Joaquin River system has tremendous social, environmental, and economic value to the people of California for many consumptive and nonconsumptive beneficial purposes. The San Joaquin River system provides for flood protection, agricultural, municipal, and industrial uses, and for hydroelectric power, fish, wildlife, recreation, and navigation.

(b) Existing conditions on the San Joaquin River are less than satisfactory for many of the uses of the system, including water supply, water quality, flood protection, fisheries, wildlife habitat, and recreation.

(c) The San Joaquin River Management Program Advisory Council was created by legislation in 1990 to develop a management program to identify actions that may be taken to reach compatible solutions to water supply, water quality, flood protection, fisheries, wildlife habitat, and recreational needs.

(d) The advisory council has identified and described the issues and problems concerning the river system, coordinated with state and federal agencies on their respective programs and studies involving the San Joaquin River Basin, and is scheduled in 1995 to make recommendations for compatible solutions.

(e) The Central Valley Improvement Act (Public Law 102-575) directs the United States Department of the Interior to develop and coordinate with the state San Joaquin River Management Program a comprehensive plan, that is reasonable, prudent, and feasible, to address fish, wildlife, and habitat concerns on the San Joaquin River. These are areas where the advisory council has already invested a great deal of effort and can make a considerable contribution.

(f) Extending the authorization for the advisory council will allow the advisory council to continue the consensus-building forum, planning, and study efforts, to pursue the implementation of recommended river improvements and management strategies identified in the advisory council's final report, and to coordinate activities relevant to the implementation of the federal act.

SEC. 5. Section 12273 of the Water Code is amended to read:

12273. This part shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, repeals or extends that date.

CHAPTER 606

An act to amend Section 7102 of, and to add Section 7104 to, the Government Code, and to amend Sections 17052.15, 17053.10, 17053.17, 17233, 17266, 17276.2, 23612.6, 23623.5, 23625, 24356.4, 24385, and 24416.2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 7102 of the Government Code is amended to read:

7102. (a) The Los Angeles Revitalization Zone shall be the specific geographic areas that suffered substantial property damage to businesses as a result of the civil disturbances of April 29, 1992, and the following days, in the County of Los Angeles and the affected cities within that county. The zone shall also include the supporting residential areas for the business areas. For purposes of this section, "supporting residential areas" means areas of high-density unemployment adjacent to areas of depressed economic business activity as a result of civil unrest on April 29 and 30, 1992.

(b) The County of Los Angeles and the affected cities within that county shall each prepare a map of the area within their jurisdiction that suffered substantial property damage to businesses as a result of the unrest. These maps shall also include the supporting residential areas. One or more of the following techniques shall be used by the jurisdiction in describing the areas:

(1) ZIP codes.

(2) Census tracts and block groups.

(3) Street names in a modified metes and bounds technique.

(c) The maps shall be submitted to the Trade and Commerce Agency for approval. The agency shall exclude a geographic area from the map if it finds that no substantial damage occurred in the geographic area as a result of the civil disturbances. The agency's determination on the submitted maps shall be made on or before December 31, 1992. The agency shall retain jurisdiction to determine whether an approved map complies with this chapter.

(d) For purposes of the tax incentives added to the Personal Income Tax Law (Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code) and the Bank and Corporations Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) by the act which added this chapter, the Los Angeles Revitalization Zone shall be deemed to be operative on May 1, 1992. Upon a determination in accordance with subdivision (c) that a map is not in compliance, or the exclusion of an area from the amended Los Angeles

Revitalization Zone determined pursuant to Section 7104, Sections 17052.15, 17053.10, 17053.17, 17233, 17266, 17276.2, 23612.6, 23623.5, 23625, 24356.4, 24385, and 24416.2 shall become inoperative as provided in those sections, and any carryover of unused credit or deduction amounts shall be authorized as may be provided in those sections.

SEC. 2. Section 7104 is added to the Government Code, to read:

7104. (a) No later than 60 days after the effective date of this section, the Secretary of the Trade and Commerce Agency shall publish an amended Los Angeles Revitalization Zone. The amended zone shall consist of the zone as determined or modified pursuant to subdivision (c) of Section 7102 minus any areas that do not comply with subdivision (b).

(b) The amended zone shall only consist of both of the following:

(1) An area of substantial property damage.

(2) A high density unemployment area.

(c) "An area of substantial property damage" means both of the following:

(1) Census tracts or ZIP codes, or both, each of which include at least two street addresses where property damage occurred as a result of the civil disturbances of April 29, 1992, and the following days, as reported on the Office of Emergency Services' maps of damage sites.

(2) Complete ZIP codes or census tracts, or both, equal to or less than 15 percent of the area described in paragraph (1).

(d) "A high density unemployment area" means a geographic area that, except for subdivision (e), meets either of the following requirements:

(1) It contains at least 4,000 people in a cluster of census tracts, each of which meets all of the following criteria according to the 1990 decennial census information:

(A) The average unemployment rate for the census tract was at least one and one-half times the average national rate of unemployment.

(B) The average poverty rate for the census tract was at least one and one-half times the average national poverty rate.

(C) Median household income is below twenty-five thousand dollars ($25,000).

(2) It is either an eligible area, as defined in Section 5602.1 of Title 10 of the California Code of Regulations, for a designated enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070), or it has been previously designated as a high density unemployment area pursuant to Chapter 12.9 (commencing with Section 7080).

(e) Notwithstanding subdivision (d), the Secretary of the Trade and Commerce Agency shall not subtract any census tract that comes within 5 percent of complying with paragraph (1) of subdivision (d).

SEC. 3. Section 17052.15 of the Revenue and Taxation Code is amended to read:

17052.15. (a) For each taxable year beginning on or after January

1, 1992, and before January 1, 1998, there shall be allowed a credit against the "net tax" (as defined by Section 17039) an amount, not to exceed the limitation in subdivision (f), that is equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means a person or entity engaged in a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(2) "Qualified property" means the purchase on or after May 1, 1992, of either or both of the following:

(A) Building materials to replace or repair the taxpayer's building and fixtures.

(B) Machinery or equipment, excluding inventory, to be used by the taxpayer exclusively in the Los Angeles Revitalization Zone.

(c) (1) In the case where a credit is allowed for qualified property under more than one section in this part, the taxpayer shall make an election, on the return filed for each year, as to which section applies to that taxpayer.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(d) In the case where the credit allowed under this section exceeds the limitation imposed by subdivision (f) for the taxable year, that portion of the credit that exceeds the limitation imposed by subdivision (f) may be carried over and added to this credit in succeeding taxable years for the number of taxable years in which the designation of a zone under Section 7102 of the Government Code is operative, or 15 taxable years, if longer, until the credit is used. The credit shall be applied first to the earliest taxable years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to the sales and use tax paid or incurred in connection with the purchase of qualified property.

(f) The amount of the credit provided by this section, including any credit carryover from prior years, in any taxable year shall not exceed the amount of tax that would be imposed on the income attributable to business activities of the taxpayer within the Los Angeles Revitalization Zone (designated pursuant to Section 7102 of the Government Code) as if that attributable income represented all of the income of the taxpayer subject to tax under this part. In the event that a credit carryover is allowable under subdivision (d) for any taxable year after the Los Angeles Revitalization Zone designation has expired, the Los Angeles Revitalization Zone shall be deemed to remain in existence for purposes of computing this limitation. The amount of that attributable income shall be determined in accordance with the provisions of Article 2

(commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(1) For each taxable year beginning on or after January 1, 1992, and before January 1, 1998, income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(2) The Los Angeles Revitalization Zone shall be substituted for "this state."

(g) If the qualified property is disposed of or no longer used by the taxpayer in the Los Angeles Revitalization Zone, at any time before the close of the second taxable year after the property is placed in service, the amount of the credit previously claimed shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(h) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (d).

(i) Upon the determination of a noncomplying map pursuant to Section 7102, or the exclusion of an area from the amended zone determined pursuant to Section 7104, this section shall be inoperative for the next following taxable year and each taxable year thereafter with respect to a taxpayer's business activities within that geographic area that is identified by the noncomplying map or excluded area. However, any unused credit amount may continue to be carried forward as provided in subdivision (d).

SEC. 4. Section 17053.10 of the Revenue and Taxation Code is amended to read:

17053.10. (a) For each taxable year beginning on or after January 1, 1992, and before January 1, 1998, there shall be allowed as credit against the "net tax" (as defined by Section 17039) an amount equal to the sum of the following:

(1) One hundred percent of the qualified wages paid or incurred during the period from May 1, 1992, to the end of the sixth full month after the designation of the Los Angeles Revitalization Zone, with respect to qualified employees that are hired during that period.

(2) Seventy-five percent of the qualified wages paid or incurred during the period from the beginning of the seventh month after designation to the end of the 12th full month after designation, with respect to qualified employees that are hired during that period.

(3) Fifty percent of the qualified wages paid or incurred during the period from the beginning of the 13th month after designation to the end of the 60th full month after designation, with respect to qualified employees that are hired during that period.

(b) For purposes of this section:

(1) "Qualified wages" means the wages paid or incurred by the employer for construction work in the Los Angeles Revitalization Zone, as designated pursuant to Section 7102 of the Government Code, during the taxable year with respect to qualified employees.

"Qualified wages" means that portion of hourly wages that does not exceed 150 percent of the minimum wage.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Qualified employee" means an individual to whom both of the following apply:

(A) Is a resident, as defined in Section 7101 of the Government Code, in the Los Angeles Revitalization Zone, as defined in Section 7102 of the Government Code.

(B) Was hired by the taxpayer to perform construction work in the Los Angeles Revitalization Zone.

(4) "Los Angeles Revitalization Zone" means the area designated under Section 7102 of the Government Code.

(5) "Construction work" means any work performed by a qualified employee directly to the erection, demolition, repair, or renovation of a structure located within the Los Angeles Revitalization Zone.

(c) If an employer acquires the major portion of a trade or business of another employer (hereafter in this subdivision referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for the purposes of applying this section for any taxable year ending after the acquisition, the employment relationship between an employee and employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(d) The credit shall be reduced by the credits allowable under Sections 17053.7, 17053.8, 17053.11, and 17053.17 claimed for the same individual. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code for the same individual.

(e) Any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of credit.

(f) In the case where the credit allowed under this section exceeds the limitation imposed by subdivision (g) for the taxable year, that portion of the credit that exceeds the limitation imposed by subdivision (g) may be carried over and added to this credit in succeeding taxable years for the number of taxable years in which the designation of a zone under Section 7102 of the Government Code is operative, or 15 taxable years, if longer, until the credit is used. The credit shall be applied first to the earliest taxable years possible.

(g) The amount of the credit allowed by this section, including any credit carryover from prior years, in any taxable year shall not exceed the amount of tax that would be imposed on the income attributable to business activities of the taxpayer within the Los Angeles Revitalization Zone (as defined in Section 7102 of the

Government Code) as if that attributable income represented all of the income of the taxpayer subject to tax under this part. In the event that a credit carryover is allowable under subdivision (f) for any taxable year after the Los Angeles Revitalization Zone designation has expired, the Los Angeles Revitalization Zone shall be deemed to remain in existence for purposes of computing this limitation. The amount of that attributable income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(1) For each taxable year beginning on or after January 1, 1992, and before January 1, 1998, income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(2) The Los Angeles Revitalization Zone shall be substituted for "this state."

(h) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount (determined under those regulations) equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(vi) A termination of employment due to a contractual agreement.

(B) For purposes of paragraph (1), the employment relationship

between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(i) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f).

(j) Upon the determination of a noncomplying map pursuant to Section 7102, or the exclusion of an area from the amended zone determined pursuant to Section 7104, this section shall be inoperative for the next following taxable year and each taxable year thereafter with respect to a taxpayer's business activities within that geographic area that is identified by the noncomplying map or excluded area. However, any unused credit amount may continue to be carried forward as provided in subdivision (f).

SEC. 5. Section 17053.17 of the Revenue and Taxation Code is amended to read:

17053.17. (a) For each taxable year beginning on or after January 1, 1992, and before January 1, 1998, there shall be allowed for hiring qualified disadvantaged individuals on or after May 1, 1992, a credit against the "net tax" (as defined by Section 17039) for the taxable year in an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means the wages paid or incurred by the employer during the taxable year to qualified disadvantaged individuals. "Qualified wages" means that portion of hourly wages that does not exceed 150 percent of the minimum wage.

(2) "Qualified years one through five wages" means, with respect to any individual, qualified wages received during the 60-month period beginning with the day the individual commences employment within the Los Angeles Revitalization Zone.

(3) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(4) "Qualified disadvantaged individual" means an individual who is a resident in the Los Angeles Revitalization Zone.

(5) "Los Angeles Revitalization Zone" means the area designated

under Section 7102 of the Government Code.

(6) "Resident" means a person residing in the Los Angeles Revitalization Zone pursuant to Section 7102 of the Government Code.

(7) "Qualified employee" means an individual that meets both of the following:

(A) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in the Los Angeles Revitalization Zone.

(B) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in the Los Angeles Revitalization Zone.

(8) (A) All employees of trades or businesses, that are not incorporated, that are under common control shall be treated as employed by a single employer.

(B) The credit, if any, allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

The regulations prescribed under this subparagraph shall be based on principles similar to the principles that apply in the case of controlled groups of corporations as specified in paragraph (8) of subdivision (b) of Section 23623.5.

(9) If an employer acquires the major portion of a trade or business of another employer (hereafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for the purposes of applying this section (other than subdivision (c)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(c) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a), is terminated by the taxpayer at any time during the first 270 days of that employment, whether or not consecutive, or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount, determined under those regulations, equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(d) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated, for purposes of this part, as the employer with respect to those wages.

(e) The credit shall be reduced by the credit allowed under Sections 17053.7, 17053.8, 17053.10, and 17053.11, claimed for the same individual. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit.

(f) In the case where the credit allowed under this section exceeds the limitation imposed by subdivision (g) for the taxable year, that portion of the credit that exceeds the limitation imposed by subdivision (g) may be carried over and added to this credit in succeeding taxable years while the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code is operative or 15 taxable years, if longer, until the credit is used. The credit shall be applied first to the earliest taxable years possible.

(g) The amount of the credit allowed by this section, including any credit carryover from prior years, in any taxable year shall not exceed the amount of tax that would be imposed on the income attributed to business activities of the taxpayer within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) as if that attributed income represented all of the income of the taxpayer subject to tax under this part. In the event

that a credit carryover is allowable under subdivision (f) for any taxable year after the Los Angeles Revitalization Zone designation has expired, the Los Angeles Revitalization Zone shall be deemed to remain in existence for purposes of computing this limitation. The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section as follows:

(1) For each taxable year beginning on or after January 1, 1992, and ending on or before January 1, 1998, income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(2) "The Los Angeles Revitalization Zone" shall be substituted for "this state."

(h) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as specified in subdivision (f).

(i) Upon the determination of a noncomplying map pursuant to Section 7102, or the exclusion of an area from the amended zone determined pursuant to Section 7104, this section shall be inoperative for the next following taxable year and each taxable year thereafter with respect to a taxpayer's business activities within that geographic area that is identified by the noncomplying map or excluded area. However, any unused credit amount may continue to be carried forward as provided in subdivision (f).

SEC. 6. Section 17233 of the Revenue and Taxation Code is amended to read:

17233. (a) There shall be allowed as a deduction the amount of net interest received by the taxpayer in payment of indebtedness incurred on or after May 1, 1992, of a person or entity engaged in trade or business located in the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code).

(b) No deduction shall be allowed under subdivision (a) unless at the time the indebtedness is incurred each of the following requirements are met:

(1) The trade or business is located solely within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code).

(2) The indebtedness is incurred solely in connection with activity within the Los Angeles Revitalization Zone.

(3) The taxpayer has no equity or other ownership interest in the debtor.

(c) This section shall remain in effect only until December 1, 1998, and as of that date is repealed.

(d) Upon the determination of a noncomplying map pursuant to Section 7102, or the exclusion of an area from the amended zone determined pursuant to Section 7104, this section shall be inoperative for the next following taxable year and each taxable year thereafter

with respect to a taxpayer's business activities within that geographic area that is identified by the noncomplying map or excluded area.

SEC. 7. Section 17266 of the Revenue and Taxation Code is amended to read:

17266. (a) A taxpayer may elect to treat the cost of any Section 17266 property as an expense that is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the Section 17266 property is placed in service.

(b) (1) An election made under this section for any taxable year shall meet both of the following requirements:

(A) Specify the items of Section 17266 property to which the election applies and the cost of each of those items that is to be taken into account under subdivision (a).

(B) Be made on the taxpayer's return of the tax imposed by this part for the taxable year.

(2) Any election made under this section, and any specifications contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(c) For purposes of this section:

(1) "Taxpayer" means a person or entity engaged in a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(2) "Section 17266 property" means any recovery property that is Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code) and that is acquired by purchase on or after September 1, 1992, for exclusive use in a trade or business conducted within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(3) "Purchase" means any acquisition of property, but only if both of the following apply:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 267 or 707(b) of the Internal Revenue Code (but, in applying Sections 267(b) and 267(c) of the Internal Revenue Code for purposes of this section, Section 267(c)(4) of the Internal Revenue Code shall be treated as providing that the family of an individual shall include only his or her spouse, ancestors, and lineal descendants).

(B) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of the property in the hands of the person from whom acquired, or under Section 1014 of the Internal Revenue Code, relating to the basis of the property acquired from a decedent.

(d) For purposes of this section, the cost of the property does not include so much of the basis of the property as is determined by reference to the basis of other property held at any time by the person acquiring the property.

(e) This section shall not apply to estates and trusts.

(f) This section shall not apply to any property described in

Section 168(f) of the Internal Revenue Code, relating to property to which Section 168 of the Internal Revenue Code does not apply.

(g) This section shall apply only to property that is used exclusively in a trade or business conducted in the Los Angeles Revitalization Zone.

(h) Any amount deducted under subdivision (a) with respect to property that ceases to be used in a trade or business within the Los Angeles Revitalization Zone at any time before the close of the second taxable year after the property was placed in service shall be included in income in the taxable year in which the property ceases to be so used.

(i) This section shall remain in effect only until December 1, 1998, and as of that date is repealed.

(j) Upon the determination of a noncomplying map pursuant to Section 7102, or the exclusion of an area from the amended zone determined pursuant to Section 7104, this section shall be inoperative for the next following taxable year and each taxable year thereafter with respect to a taxpayer's business activities within that geographic area that is identified by the noncomplying map or excluded area.

SEC. 8. Section 17276.2 of the Revenue and Taxation Code is amended to read:

17276.2. The term "qualified taxpayer" as used in Section 17276.1 means any of the following:

(a) A taxpayer engaged in the conduct of a qualified business within a program area (as defined in Section 7082 of the Government Code).

(1) A net operating loss shall not be a net operating loss carryback to any taxable year and a net operating loss for any taxable year beginning on or after the date that the taxpayer becomes a qualified business shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code). That attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section as follows:

(i) For each taxable year beginning on or after January 1, 1991, and ending on or before December 31, 1996, loss shall be apportioned to the program area by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The program area" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code) determined in accordance with the provisions of

Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section as follows:

(i) For each taxable year beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the program area by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The program area" shall be substituted for "this state."

(b) A taxpayer who is engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code on or after that designation.

(1) A net operating loss shall not be a net operating loss carryback to any taxable year and a net operating loss for any taxable year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated an enterprise zone shall be a net operating loss carryover to each following taxable year that ends before the expiration or revocation of the designation of the enterprise zone under Section 7073 of the Government Code or to each of 15 taxable years following the taxable year of loss, if longer.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code). The attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section as follows:

(i) For each taxable year beginning on or after January 1, 1991, and ending on or before December 31, 1996, loss shall be apportioned to the enterprise zone by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The enterprise zone" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code) determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section as follows:

(i) For each taxable year beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the enterprise zone by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The enterprise zone" shall be substituted for "this state."

(c) A taxpayer engaged in the conduct of a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback

for any taxable year, and a net operating loss for any taxable year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated the Los Angeles Revitalization Zone shall be a net operating loss carryover to each following taxable year that ends before the expiration or revocation of the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code or to each of the 15 taxable years following the taxable year of loss, if longer.

(2) For the purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the business activities of the taxpayer within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code). The attributable loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(i) For each taxable year beginning on or after January 1, 1992, and ending before January 1, 1998, loss shall be apportioned to the Los Angeles Revitalization Zone by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The Los Angeles Revitalization Zone" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(i) For each taxable year beginning on or after January 1, 1992, and before January 1, 1998, income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The Los Angeles Revitalization Zone" shall be substituted for "this state."

(3) This subdivision shall cease to be operative on January 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this subdivision.

(4) Upon the determination of a noncomplying map pursuant to Section 7102, or the exclusion of an area from the amended zone determined pursuant to Section 7104, this section shall be inoperative for the next following taxable year and each taxable year thereafter with respect to a taxpayer's business activities within that geographic area that is identified by the noncomplying map or excluded area. However, any unused deduction amount may continue to be carried forward as provided in this subdivision.

(d) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, a taxpayer engaged in the conduct of a

trade or business within a LAMBRA.

(1) A net operating loss shall not be a net operating loss carryback for any taxable year, and a net operating loss for any taxable year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated a LAMBRA shall be a net operating loss carryover to each following taxable year that ends before the expiration or revocation of the designation of a LAMBRA under Section 7116 of the Government Code or to each of the 15 taxable years following the taxable year of loss, if longer.

(2) For the purposes of this subdivision:

(A) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(B) "Taxpayer" means a taxpayer or partnership that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(i) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(ii) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(I) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(II) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(iii) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of subclauses (I) and (II), respectively, of clause (ii) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(C) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the business activities of the taxpayer within a LAMBRA. The attributable loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(i) For each taxable year beginning on or after January 1, 1995, loss shall be apportioned to a LAMBRA by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The LAMBRA" shall be substituted for "this state."

(D) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within a LAMBRA determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(i) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, income shall be apportioned to a LAMBRA by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The LAMBRA" shall be substituted for "this state."

(iii) If a loss carryover is allowable pursuant to this section for any taxable year after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing this limitation.

(e) A taxpayer who qualifies as a "qualified taxpayer" shall, for the taxable year of the net operating loss and any taxable year to which that net operating loss may be carried, designate on the return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account subdivision (f).

(f) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in a taxable year, the taxpayer shall designate which subdivision of this section is to apply to the taxpayer.

(g) Notwithstanding Section 17276, the amount of the loss determined under this section shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (e) shall be included in the election under Section 17276.1.

SEC. 9. Section 23612.6 of the Revenue and Taxation Code is amended to read:

23612.6. (a) For each income year beginning on or after January 1, 1992 and before January 1, 1998, there shall be allowed a credit against the "tax" (as defined by Section 23036) for the income year an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means a bank or corporation engaged in a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(2) "Qualified property" means the purchase on or after May 1,

1992, of either or both of the following:

(A) Building materials to replace or repair the taxpayer's building and fixtures.

(B) Machinery or equipment, excluding inventory, to be used by the taxpayer exclusively in the Los Angeles Revitalization Zone.

(c) (1) In the case where a credit is allowed for qualified property under more than one section in this part, the taxpayer shall make an election, on the return filed for each year, as to which section applies to that taxpayer.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(d) In the case where the credit allowed under this section exceeds the limitation imposed by subdivision (f) for the income year, that portion of the credit that exceeds the limitation imposed by subdivision (f) may be carried over and added to this credit in succeeding income years for the number of income years in which the designation of a zone under Section 7102 of the Government Code is operative, or 15 taxable years, if longer, until the credit is used. The credit shall be applied first to the earliest income year possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to the sales and use tax paid or incurred in connection with the purchase of qualified property.

(f) The amount of the credit provided by this section, including any credit carryover from prior years, in any taxable year shall not exceed the amount of tax which would be imposed on the income attributable to business activities of the taxpayer within the Los Angeles Revitalization Zone (designated pursuant to Section 7102 of the Government Code) as if that attributable income represented all of the income of the taxpayer subject to tax under this part. In the event that a credit carryover is allowable under subdivision (d) for any income year after the Los Angeles Revitalization Zone designation has expired, the Los Angeles Revitalization Zone shall be deemed to remain in existence for purposes of computing this limitation. The amount of that attributable income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified as follows:

(1) For each income year beginning on or after January 1, 1992 and before January 1, 1998, income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(2) The Los Angeles Revitalization Zone shall be substituted for "this state."

(g) If the qualified property is disposed of or no longer used by the taxpayer in the Los Angeles Revitalization Zone, at any time before

the close of the second income year after the property is placed in service, the amount of the credit previously claimed shall be added to the taxpayer's tax liability in the income year of that disposition or nonuse.

(h) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (d).

(i) Upon the determination of a noncomplying map pursuant to Section 7102, or the exclusion of an area from the amended zone determined pursuant to Section 7104, this section shall be inoperative for the next following income year and each income year thereafter with respect to a taxpayer's business activities within that geographic area that is identified by the noncomplying map or excluded area. However, any unused credit amount may continue to be carried forward as provided in subdivision (d).

SEC. 10. Section 23623.5 of the Revenue and Taxation Code is amended to read:

23623.5. (a) For each income year beginning on or after January 1, 1992, and before January 1, 1998, there shall be allowed for hiring qualified disadvantaged individuals on or after May 1, 1992, a credit against the "tax" (as defined by Section 23036) in an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means the wages paid or incurred by the employer during the income year to qualified disadvantaged individuals. "Qualified wages" means that portion of hourly wages that does not exceed 150 percent of the minimum wage.

(2) "Qualified years one through five wages" means, with respect to any individual, qualified wages received during the 60-month period beginning with the day the individual commences employment within the Los Angeles Revitalization Zone.

(3) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(4) "Qualified disadvantaged individual" means an individual who is a resident in the Los Angeles Revitalization Zone.

(5) "Los Angeles Revitalization Zone" means the area designated under Section 7102 of the Government Code.

(6) "Resident" means a person residing in the Los Angeles Revitalization Zone pursuant to Section 7102 of the Government Code.

(7) For purposes of this section, "qualified employee" means an individual that meets both of the following:

(A) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in the Los Angeles Revitalization Zone.

(B) Who performs at least 50 percent of his or her services for the taxpayer during the income year in the Los Angeles Revitalization Zone.

(8) (A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single employer. In any such case, the credit, if any, allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit. For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of the Internal Revenue Code.

(B) If an employer acquires the major portion of a trade or business of another employer (hereafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for the purposes of applying this section (other than subdivision (c)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(c) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a), is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is

removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(d) In the case of an organization to which Section 593 of the Internal Revenue Code applies, and a regulated investment company or a real estate investment trust subject to taxation under this part, rules similar to the rules provided in Sections 46(e) and 46(h) of the Internal Revenue Code shall apply.

(e) The credit shall be reduced by the credit allowed under Sections 23621, 23622, 23623, and 23625, claimed for the same individual. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit.

(f) In the case where the credit allowed under this section exceeds the limitation imposed by subdivision (g) for the income year, that portion of the credit that exceeds the limitation imposed by subdivision (g) may be carried over and added to this credit in succeeding income years while the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code is operative or 15 income years, if longer, until the credit is used. The credit shall be applied first to the earliest income years possible.

(g) The amount of the credit allowed by this section, including any credit carryover from prior years, in any income year shall not exceed the amount of tax that would be imposed on the income

attributed to business activities of the taxpayer within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code). In the event that a credit carryover is allowable under subdivision (f) for any income year after the Los Angeles Revitalization Zone designation has expired, the Los Angeles Revitalization Zone shall be deemed to remain in existence for purposes of computing this limitation. The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section as follows:

(1) For each income year beginning on or after January 1, 1992, and ending on or before January 1, 1998, income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(2) "The Los Angeles Revitalization Zone" shall be substituted for "this state."

(h) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as specified in subdivision (f).

(i) Upon the determination of a noncomplying map pursuant to Section 7102, or the exclusion of an area from the amended zone determined pursuant to Section 7104, this section shall be inoperative for the next following income year and each income year thereafter with respect to a taxpayer's business activities within that geographic area that is identified by the noncomplying map or excluded area. However, any unused credit amount may continue to be carried forward as provided in subdivision (f).

SEC. 11. Section 23625 of the Revenue and Taxation Code is amended to read:

23625. (a) For each income year beginning on or after January 1, 1992, and before January 1, 1998, there shall be allowed as credit against the "tax" (as defined by Section 23036) an amount, not to exceed the limitation in subdivision (g), that is equal to the sum of the following:

(1) One hundred percent of the qualified wages paid or incurred during the period from May 1, 1992, to the end of the sixth full month after the designation of the Los Angeles Revitalization Zone with respect to qualified employees that are hired during that period.

(2) Seventy-five percent of the qualified wages paid or incurred during the period from the beginning of the seventh month after designation to the end of the 12th full month after designation with respect to qualified employees that are hired during that period.

(3) Fifty percent of the qualified wages paid or incurred during the period from the beginning of the 13th month after designation to the end of the 60th full month after designation with respect to qualified employees that are hired during that period.

(b) For purposes of this section:

(1) "Qualified wages" means the wages paid or incurred by the employer for construction work in the Los Angeles Revitalization Zone, as designated pursuant to Section 7102 of the Government Code, during the income year with respect to qualified employees. "Qualified wages" means that portion of hourly wages which does not exceed 150 percent of the minimum wage.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Qualified employee" means an individual to whom both of the following apply:

(A) Is a resident in the Los Angeles Revitalization Zone, as defined in Section 7101 of the Government Code.

(B) Was hired by the taxpayer to perform construction work in the Los Angeles Revitalization Zone, as defined in Section 7102 of the Government Code.

(4) "Los Angeles Revitalization Zone" means the area designated under Section 7102 of the Government Code.

(5) "Construction work" means any work performed by a qualified employee directly related to the erection, demolition, repair, or renovation of a structure located within the Los Angeles Revitalization Zone.

(c) If an employer acquires the major portion of a trade or business of another employer (hereafter in this subdivision referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for the purposes of applying this section for any income year ending after the acquisition, the employment relationship between an employee and employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(d) The credit shall be reduced by the credits allowable under Sections 23621 to 23623.5, inclusive, claimed for the same individual. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code for the same individual.

(e) Any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of credit.

(f) In the case where the credit allowed under this section exceeds the limitation imposed by subdivision (g) for the income year, that portion of the credit that exceeds the limitation imposed by subdivision (g) may be carried over and added to this credit in succeeding income years for the number of income years in which the designation of a zone under Section 7102 of the Government Code is operative, or 15 taxable years, if longer, until the credit is used. The credit shall be applied first to the earliest income year possible.

(g) The amount of the credit allowed by this section, including any credit carryover from prior years, in any income year shall not

exceed the amount of tax that would be imposed on the income attributable to business activities of the taxpayer within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) as if that attributable income represented all of the income of the taxpayer subject to tax under this part. In the event that a credit carryover is allowable under subdivision (f) for any income year after the Los Angeles Revitalization Zone designation has expired, the Los Angeles Revitalization Zone shall be deemed to remain in existence for purposes of computing this limitation. The amount of that attributable income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(1) For each income year beginning on or after January 1, 1992, and before January 1, 1998, income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(2) The Los Angeles Revitalization Zone shall be substituted for "this state."

(h) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount (determined under those regulations) equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(vi) A termination of employment due to a contractual agreement.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(i) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f).

(j) Upon the determination of a noncomplying map pursuant to Section 7102, or the exclusion of an area from the amended zone determined pursuant to Section 7104, this section shall be inoperative for the next following income year and each income year thereafter with respect to a taxpayer's business activities within that geographic area that is identified by the noncomplying map or excluded area. However, any unused credit amount may continue to be carried forward as provided in subdivision (f).

SEC. 12. Section 24356.4 of the Revenue and Taxation Code is amended to read:

24356.4. (a) A taxpayer may elect to treat the cost of any Section 24356.4 property as an expense that is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the income year in which the Section 24356.4 property is placed in service.

(b) (1) An election made under this section for any income year shall meet both of the following requirements:

(A) Specify the items of Section 24356.4 property to which the election applies and the cost of each of those items that is to be taken into account under subdivision (a).

(B) Be made on the taxpayer's return of the tax imposed by this part for the income year.

(2) Any election made under this section, and any specifications contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(c) For purposes of this section:

(1) "Taxpayer" means a person or entity engaged in a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(2) "Section 24356.4 property" means any recovery property that is Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code) and that is acquired by purchase on or after September 1, 1992, for exclusive use in a trade or business conducted within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(3) "Purchase" means any acquisition of property, but only if all of the following apply:

(A) The property is not acquired from a person whose

relationship to the person acquiring it would result in the disallowance of losses under Section 267 or 707(b) of the Internal Revenue Code (but, in applying Sections 267(b) and 267(c) of the Internal Revenue Code, Section 267(c)(4) of the Internal Revenue Code shall be treated as providing that the family of an individual shall include only his or her spouse, ancestors, and lineal descendants).

(B) The property is not acquired by one member of an affiliated group from another member of the same affiliated group.

(C) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of the property in the hands of the person from whom acquired.

(d) This section shall not apply to any property described in Section 168(f) of the Internal Revenue Code, relating to property to which Section 168 of the Internal Revenue Code does not apply.

(e) This section shall apply only to property that is used exclusively in a trade or business conducted in the Los Angeles Revitalization Zone.

(f) Any amount deducted under subdivision (a) with respect to property that ceases to be used in a trade or business within the Los Angeles Revitalization Zone at any time before the close of the second income year after the property was placed in service shall be included in income in the income year in which property ceases to be so used.

(g) This section shall remain in effect only until December 1, 1998, and as of that date is repealed.

(h) Upon the determination of a noncomplying map pursuant to Section 7102, or the exclusion of an area from the amended zone determined pursuant to Section 7104, this section shall be inoperative for the next following income year and each income year thereafter with respect to a taxpayer's business activities within that geographic area that is identified by the noncomplying map or excluded area.

SEC. 13. Section 24385 of the Revenue and Taxation Code is amended to read:

24385. (a) There shall be allowed as a deduction the amount of net interest received by the taxpayer in payment of indebtedness incurred on or after May 1, 1992, of a person or entity engaged in trade or business located in the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code).

(b) No deduction shall be allowed under subdivision (a) unless at the time the indebtedness is incurred each of the following requirements are met:

(1) The trade or business is located solely within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code).

(2) The indebtedness is incurred solely in connection with activity within the Los Angeles Revitalization Zone.

(3) The taxpayer has no equity or other ownership interest in the debtor.

(c) This section shall remain in effect only until December 1, 1998, and as of that date is repealed.

(d) Upon the determination of a noncomplying map pursuant to Section 7102, or the exclusion of an area from the amended zone determined pursuant to Section 7104, this section shall be inoperative for the next following income year and each income year thereafter with respect to a taxpayer's business activities within that geographic area that is identified by the noncomplying map or excluded area.

SEC. 14. Section 24416.2 of the Revenue and Taxation Code is amended to read:

24416.2. The term "qualified taxpayer" as used in Section 24416.1 means any of the following:

(a) A taxpayer engaged in the conduct of a qualified business within a program area (as defined in Section 7082 of the Government Code).

(1) A net operating loss shall not be a net operating loss carryback for any income year and a net operating loss for any income year beginning on or after the date that the taxpayer becomes a qualified business shall be a net operating loss carryover to each of the 15 income years following the income year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code). That attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section as follows:

(i) For each income year beginning on or after January 1, 1991, and ending on or before December 31, 1996, loss shall be apportioned to the program area by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The program area" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code) determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section as follows:

(i) For each income year beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the program area by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The program area" shall be substituted for "this state."

(b) A taxpayer who is engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code on or after that designation.

(1) (A) A net operating loss shall not be a net operating loss carryback to any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated an enterprise zone shall be a net operating loss carryover to each following income year that ends before the expiration or revocation of the designation of the enterprise zone under Section 7073 of the Government Code or to each of 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five income years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code). The attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section as follows:

(i) For each income year beginning on or after January 1, 1991, and ending on or before December 31, 1996, loss shall be apportioned to the enterprise zone by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The enterprise zone" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code) determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section as follows:

(i) For each income year beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the enterprise zone by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The enterprise zone" shall be substituted for "this state."

(c) A taxpayer engaged in the conduct of a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(1) (A) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated the Los Angeles

Revitalization Zone shall be a net operating loss carryover to each following income year that ends before the expiration or revocation of the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code or to each of the 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For the purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the business activities of the taxpayer within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code). The attributable loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120), modified as follows:

(i) The loss shall be apportioned to the Los Angeles Revitalization Zone by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The Los Angeles Revitalization Zone" shall be substituted for this state.

(B) A net operating loss carryover shall be a deduction only with respect to income attributable to the business activities of the taxpayer within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(i) For each taxable year beginning on or after January 1, 1992, and before January 1, 1998, income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The Los Angeles Revitalization Zone" shall be substituted for "this state."

(3) This subdivision shall cease to be operative on January 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this subdivision.

(4) Upon the determination of a noncomplying map pursuant to Section 7102, or the exclusion of an area from the amended zone determined pursuant to Section 7104, this section shall be inoperative for the next following income year and each income year thereafter with respect to a taxpayer's business activities within that geographic area that is identified by the noncomplying map or excluded area. However, any unused deduction amount may continue to be carried forward as provided in this subdivision.

(d) For each income year beginning on or after January 1, 1995, and before January 1, 2003, a taxpayer engaged in the conduct of a trade or business within a LAMBRA.

(1) (A) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated a LAMBRA shall be a net operating loss carryover to each following income year that ends before the expiration or revocation of the designation of a LAMBRA under Section 7116 of the Government Code or to each of the 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For the purposes of this subdivision:

(A) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(B) "Taxpayer" means a bank or corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(i) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(ii) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(I) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(II) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(iii) In the case of a taxpayer that first commences doing business in the LAMBRA during the income year, for purposes of subclauses (I) and (II), respectively, of clause (ii) the divisors "2,000" and "12"

shall be multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(C) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the business activities of the taxpayer within a LAMBRA. The attributable loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120), modified as follows:

(i) For each income year beginning on or after January 1, 1995, the loss shall be apportioned to a LAMBRA by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The LAMBRA" shall be substituted for "this state."

(D) A net operating loss carryover shall be a deduction only with respect to income attributable to the business activities of the taxpayer within a LAMBRA determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(i) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, income shall be apportioned to a LAMBRA by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The LAMBRA" shall be substituted for "this state."

(iii) If a loss carryover is allowable pursuant to this section for any income year after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing this limitation.

(e) A taxpayer who qualifies as a "qualified taxpayer" shall, for the income year of the net operating loss and any income year to which that net operating loss may be carried, designate on the return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account subdivision (f).

(f) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall designate which subdivision of this section is to apply to the taxpayer.

(g) Notwithstanding Section 24416, the amount of the loss determined under Section 24416.1 shall be the only net operating loss allowed to be carried over from that income year and the designation under subdivision (e) shall be included in the election under Section 24416.1.

SEC. 15. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 607

An act to add Section 51220.2 to, and to add Article 5.5 (commencing with Section 32295.5) to Chapter 2.5 of Part 19 of, the Education Code, relating to education.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 51220.2 is added to the Education Code, to read:

51220.2. (a) For purposes of subdivision (b) of Section 51220, "instruction in our American legal system, the operation of the juvenile and adult criminal justice systems, and the rights and duties of citizens under the criminal and civil law and the State and Federal Constitutions" may include participation in a teen court or peer court program as described in subdivision (b).

(b) A teen court or peer court program shall include each of the following components:

(1) Adjudicates nonviolent misdemeanor offenses committed by pupils in which both the defendant and the defendant's parents agree to participate in the teen court or peer court proceedings and agree to abide by the teen court's or peer court's ruling.

(2) Uses other pupils as jurors, district attorney, counsel for the defense, bailiff, and court clerk.

(3) Operates in cooperation with the court, probation department, district attorney, and public defender.

SEC. 2. Article 5.5 (commencing with Section 32295.5) is added to Chapter 2.5 of Part 19 of the Education Code, to read:

Article 5.5. Teen Court Program

32295.5. The School Law Enforcement Partnership, established pursuant to Section 32262, shall provide information to school districts and county offices of education about teen or peer court programs. A teen or peer court program shall include, but not be limited to, any program in which juvenile court judges preside over a court in which the defendant is a pupil with no prior criminal record, who is charged with a nonviolent crime and in which the jurors are also pupils.

CHAPTER 608

An act to amend Section 2881 of the Public Utilities Code, relating to telephones.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 2881 of the Public Utilities Code is amended to read:

2881. (a) The commission shall design and implement a program whereby each telephone corporation shall provide a telecommunications device capable of servicing the needs of individuals who are deaf or hearing impaired, together with a single party line, at no charge additional to the basic exchange rate, to any subscriber who is certified as an individual who is deaf or hearing impaired by a licensed physician, audiologist, or a qualified state agency and to any subscriber which is an organization representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e).

(b) The commission shall also design and implement a program whereby each telephone corporation shall provide a dual-party relay system, using third-party intervention to connect individuals who are deaf or hearing impaired and offices of organizations representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e), with persons of normal hearing by way of intercommunications devices for individuals who are deaf or hearing impaired and the telephone system, making available reasonable access of all phases of public telephone service to telephone subscribers who are deaf or hearing impaired. In order to make a dual-party relay system which will meet the requirements of individuals who are deaf or hearing impaired available at a reasonable cost, the commission shall initiate an investigation, conduct public hearings to determine the most cost-effective method of providing dual-party relay service to the deaf or hearing impaired when using a telecommunications device, and solicit the advice, counsel, and physical assistance of statewide nonprofit consumer organizations of the deaf, during the development and implementation of the system. The commission shall phase in this program, on a geographical basis, over a three-year period ending on January 1, 1987. The commission shall apply for certification of this program under rules adopted by the Federal Communications Commission pursuant to Section 401 of the Americans with Disabilities Act of 1990 (Public Law 101-336).

(c) The commission shall also design and implement a program whereby specialized or supplemental telephone communications equipment may be provided to subscribers who are certified to be

disabled at no charge additional to the basic exchange rate. The certification, including a statement of medical need for specialized telephone communications equipment, shall be provided by a licensed physician and surgeon acting within the scope of his or her license or by a qualified state agency, as determined by the commission. The commission shall, in this connection, study the feasibility of, and implement if determined to be feasible, personal income criteria, in addition to the medical certification of disability, for determining a subscriber's eligibility under this subdivision.

(d) The commission shall establish a rate recovery mechanism through a surcharge not to exceed one-half of 1 percent uniformly applied to a subscriber's intrastate telephone service, other than one-way radio paging service and universal telephone service, both within a service area and between service areas, to allow telephone corporations to recover costs as they are incurred under this section. The surcharge shall be in effect until January 1, 1997. The commission shall require that the programs implemented under this section be identified on subscribers' bills, and shall establish a fund and require separate accounting for each of the programs implemented under this section.

(e) The commission shall determine and specify those statewide organizations representing the deaf or hearing impaired which shall receive a telecommunications device pursuant to subdivision (a) or a dual-party relay system pursuant to subdivision (b), or both, and in which offices the equipment shall be installed in the case of an organization having more than one office. The commission shall direct the telephone corporations subject to its jurisdiction to comply with its determinations and specifications in this regard.

(f) The commission shall annually review the surcharge level and the balances in the funds established pursuant to subdivision (d). Until January 1, 1997, the commission shall be authorized to make, within the limits set by subdivision (d), any necessary adjustments to the surcharge to ensure that the programs supported thereby are adequately funded and that the fund balances are not excessive. A fund balance which is projected to exceed six months' worth of projected expenses at the end of the fiscal year is excessive.

(g) The commission shall prepare and submit to the Legislature, on or before December 31, 1988, and annually thereafter, a report on the fiscal status of the programs established and funded pursuant to this section and Sections 2881.1 and 2881.2. The report shall include a statement of the surcharge level established pursuant to subdivision (d) and revenues produced by the surcharge, an accounting of program expenses, and an evaluation of options for controlling those expenses and increasing program efficiency, including, but not limited to, all of the following proposals:

(1) The establishment of a means test for persons to qualify for program equipment or free or reduced charges for the use of telecommunication services.

(2) If and to the extent not prohibited under Section 401 of the

Americans with Disabilities Act of 1990 (Public Law 101-336), the imposition of limits or other restrictions on maximum usage levels for the relay service, which shall include the development of a program to provide basic communications requirements to all relay users at discounted rates, including discounted toll call rates, and, for usage in excess of those basic requirements, at rates which recover the full costs of service.

(3) More efficient means for obtaining and distributing equipment to qualified subscribers.

(4) The establishment of quality standards for increasing the efficiency of the relay system.

CHAPTER 609

An act to amend Section 10654 of the Water Code, to amend Section 5.1 of the Central Delta Water Agency Act (Chapter 1133 of the Statutes of 1973), and to amend Section 5.1 of the North Delta Water Agency Act (Chapter 283 of the Statutes of 1973), relating to water.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 10654 of the Water Code is amended to read:

10654. An urban water supplier may recover in its rates the costs incurred in preparing its plan and implementing the reasonable water conservation measures included in the plan. Any best water management practice that is included in the plan that is identified in the "Memorandum of Understanding Regarding Urban Water Conservation in California" is deemed to be reasonable for the purposes of this section.

SEC. 2. Section 5.1 of the Central Delta Water Agency Act (Chapter 1133 of the Statutes of 1973) is amended to read:

Sec. 5.1. (a) On or before June 30 of each year, the board shall determine, and cause to be thereafter assessed and collected, an amount of money sufficient to pay the estimated expenses and obligations, including a reasonable reserve for contingencies, of the agency, until such time as money is available to the agency from the assessments levied in the next succeeding year.

(b) Subdivision (a) applies only if the total amount of money assessed during any year pursuant to this act for purposes other than payment under the contracts provided for in Section 4.1 does not exceed the sum of two hundred fifty thousand dollars ($250,000), unless any greater amount is approved by two-thirds of the votes cast at an election of the agency.

SEC. 3. Section 5.1 of the North Delta Water Agency Act (Chapter 283 of the Statutes of 1973) is amended to read:

Sec. 5.1. (a) On or before June 30 of each year, the board shall determine, and cause to be thereafter assessed and collected, an amount of money sufficient to pay the estimated expenses and obligations, including a reasonable reserve for contingencies, of the agency, until such time as money is available to the agency from the assessments levied in the next succeeding year.

(b) Subdivision (a) applies only if the total amount of money assessed during any year pursuant to this act for purposes other than payment under the contracts provided for in Section 4.1 does not exceed the sum of two hundred fifty thousand dollars ($250,000), unless any greater amount is approved by two-thirds of the votes cast at an election of the agency.

CHAPTER 610

An act to add Section 21363.7 to the Government Code, relating to the Public Employees' Retirement System.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 21363.7 is added to the Government Code, to read:

21363.7. The special death benefit is also payable if the deceased was a state or local miscellaneous member if the death of the member was a direct consequence of a violent act perpetrated on his or her person that arose out of and was in the course of his or her official duties and there is a survivor who qualifies under subdivision (b) of Section 21364. The Workers' Compensation Appeals Board, using the same procedure as in workers' compensation hearings, shall, in disputed cases, determine whether the member's death was a direct consequence of a violent act perpetrated on his or her person that arose out of and in the course of his or her official duties.

A natural parent of surviving children eligible to receive an allowance payable under this section shall not be required to become the guardian of surviving unmarried children under 18 years of age in order to be paid the benefits prescribed for those children.

The jurisdiction of the Workers' Compensation Appeals shall be limited solely to the issue of industrial causation, and this section shall not be construed to authorize the Workers' Compensation Appeals Board to award costs against the system pursuant to Section 4600 or 5811 or any other provision of the Labor Code.

The benefits provided by this section shall be applicable to any acts that occurred on and after July 1, 1993.

This section shall not apply to a contracting agency nor its employees unless and until the agency elects to be subject to it by amendment to its contract made in the manner prescribed for approval of contracts, or in the case of a new contract, by express provision of the contract.

CHAPTER 611

An act to amend Section 2787 of the Civil Code, to add Sections 580.5 and 580.7 to the Code of Civil Procedure, and to amend Section 5114 of the Commercial Code, relating to letters of credit, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 2787 of the Civil Code is amended to read:

2787. The distinction between sureties and guarantors is hereby abolished. The terms and their derivatives, wherever used in this code or in any other statute or law of this state now in force or hereafter enacted, shall have the same meaning as defined in this section. A surety or guarantor is one who promises to answer for the debt, default, or miscarriage of another, or hypothecates property as security therefor. Guaranties of collection and continuing guaranties are forms of suretyship obligations, and except in so far as necessary in order to give effect to provisions specially relating thereto, shall be subject to all provisions of law relating to suretyships in general. A letter of credit is not a form of suretyship obligation. For purposes of this section, the term "letter of credit" means a "credit" or "letter of credit" as defined in subdivision (1) of paragraph (a) of Section 5103 of the Commercial Code whether or not the engagement is governed by Division 5 (commencing with Section 5101) of the Commercial Code.

SEC. 2. Section 580.5 is added to the Code of Civil Procedure, to read:

580.5. (a) For purposes of this section:

(1) "Beneficiary" means a "beneficiary" as defined in paragraph (d) of subdivision (1) of Section 5103 of the Commercial Code.

(2) "Issuer" means an "issuer" as defined in paragraph (c) of subdivision (1) of Section 5103 of the Commercial Code.

(3) "Letter of credit" means a "credit" or "letter of credit" as defined in paragraph (a) of subdivision (1) of Section 5103 of the Commercial Code whether or not the engagement is governed by Division 5 (commencing with Section 5101) of the Commercial Code.

(b) With respect to an obligation which is secured by a mortgage

or a deed of trust upon real property or an estate for years therein and which is also supported by a letter of credit, neither the presentment, receipt of payment, or enforcement of a draft or demand for payment under the letter of credit by the beneficiary of the letter of credit nor the honor or payment of, or the demand for reimbursement, receipt of reimbursement or enforcement of any contractual, statutory or other reimbursement obligation relating to, the letter of credit by the issuer of the letter of credit shall, whether done before or after the judicial or nonjudicial foreclosure of the mortgage or deed of trust or conveyance in lieu thereof, constitute any of the following:

(1) An action within the meaning of subdivision (a) of Section 726, or a failure to comply with any other statutory or judicial requirement to proceed first against security.

(2) A money judgment for a deficiency or a deficiency judgment within the meaning of Section 580a, 580b, or 580d, or subdivision (b) of Section 726, or the functional equivalent of any such judgment.

(3) A violation of Section 580a, 580b, 580d, or 726.

SEC. 3. Section 580.7 is added to the Code of Civil Procedure, to read:

580.7. (a) For purposes of this section:

(1) "Beneficiary" means a "beneficiary" as defined in paragraph (d) of subdivision (1) of Section 5103 of the Commercial Code.

(2) "Customer" means a "customer" as defined in paragraph (g) of subdivision (1) of Section 5103 of the Commercial Code.

(3) "Letter of credit" means a "credit" or "letter of credit" as defined in paragraph (a) of subdivision (1) of Section 5103 of the Commercial Code whether or not the engagement is governed by Division 5 (commencing with Section 5101) of the Commercial Code.

(b) No letter of credit shall be enforceable by any party thereto in a loan transaction in which all of the following circumstances exist:

(1) The customer is a natural person.

(2) The letter of credit is issued to the beneficiary to avoid a default of the existing loan.

(3) The existing loan is secured by a purchase money deed of trust or purchase money mortgage on real property containing one to four residential units, at least one of which is owned and occupied, or was intended at the time the existing loan was made, to be occupied by the customer.

(4) The letter of credit is issued after the effective date of this section.

SEC. 4. Section 5114 of the Commercial Code is amended to read:

5114. (1) An issuer must honor a draft or demand for payment that complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of the draft or demand by reason of an additional general term that all documents must be

satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed, when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on the negotiation or transfer of a document of title (Section 7507) or of a certificated security (Section 8306) or is forged or fraudulent or there is fraud in the transaction:

(a) The issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (Section 3302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (Section 7501) or a bona fide purchaser of a certificated security (Section 8302).

(b) In all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents.

(3) Unless otherwise agreed, an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

SEC. 5. It is the intent of the Legislature in enacting Sections 2 and 4 of this act to confirm the independent nature of the letter of credit engagement and to abrogate the holding in Western Security Bank, N.A. v. The Superior Court of Los Angeles County, 21 Cal. App. 4th 156 (1993), that presentment of a draft under a letter of credit issued in connection with a real property secured loan following foreclosure violates Section 580d of the Code of Civil Procedure and constitutes a "fraud ... or other defect not apparent on the face of the documents" under paragraph (b) of subdivision (2) of Section 5114 of the Commercial Code. The fact that a beneficiary may be precluded by applicable law from seeking a deficiency judgment respecting the underlying obligation does not permit or otherwise justify the issuer's dishonor of the draft or demand for payment under paragraph (b) of subdivision (2) of Section 5114 of the Commercial Code nor does it provide the customer with a defense to the customer's reimbursement duties under subdivision (3) of Section 5114 of the Commercial Code or under any agreement or otherwise, or provide any rights against the beneficiary as a result of performance of those duties.

The Legislature also intends to confirm the expectation of the parties to a contract that underlies a letter of credit, that the beneficiary will have available the value of the real estate collateral and the benefit of the letter of credit without regard to the order in which the beneficiary may resort to either.

SEC. 6. This act is an urgency statute necessary for the

immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to confirm and clarify the law applicable to obligations which are secured by real property or an estate for years therein and which also are supported by a letter of credit, it is necessary that this act take effect immediately.

CHAPTER 612

An act to add Section 2883 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 2883 is added to the Public Utilities Code, to read:

(a) All local telephone corporations, excluding wireless and cellular telephone corporations, shall, to the extend permitted by existing technology or facilities, provide every existing and newly installed residential telephone connection with access to "911" emergency service regardless of whether an account has been established.

(b) The commission shall prohibit any corporation from terminating access to the services described in subdivision (a) for nonpayment of any delinquent account or indebtedness owed by the subscriber to the telephone corporation. A subscriber and a telephone corporation may arrange payment schedules to regain full service.

(c) The commission shall require telephone corporations to inform subscribers of the availability of the services described in subdivision (a) in a manner determined by the commission.

(d) This section shall not be construed to relieve any person of an obligation to pay a debt owed to a telephone corporation.

(e) Nothing in this section shall require a local telephone corporation to provide "911" access pursuant to this section if doing so would preclude providing service to subscribers of residential telephone service.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless

otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 613

An act to amend Section 8670.59 of the Government Code, relating to oil spills.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 8670.59 of the Government Code is amended to read:

8670.59. (a) Any civil action brought pursuant to this chapter, or pursuant to Division 7.8 (commencing with Section 8750) of the Public Resources Code, shall be brought in the county in which the spill, discharge, or violation occurred, the county in which the principal place of business of the defendant is located, or the county in which the defendant is doing business in this state.

(b) (1) Notwithstanding any other provision of law, all criminal actions for the prosecution of misdemeanor violations of this chapter or Division 7.8 (commencing with Section 8750) of the Public Resources Code shall be commenced within one year from the date of the discovery of the facts or circumstances which constitute the violation.

(2) Notwithstanding any other provision of law, all criminal actions for the prosecution of felony violations of this chapter or Division 7.8 (commencing with Section 8750) of the Public Resources Code shall be commenced within three years from the date of the discovery of the facts or circumstances which constitute the violation.

(c) Notwithstanding any other provision of law, except as provided in subdivision (d), any action to recover civil damages or penalties shall be commenced within three years from the date of discovery of the facts or circumstances which constitute a violation of this chapter or Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(d) Any action to recover civil damages or penalties pursuant to paragraph (3), (4), (5), (6), or (7) of subdivision (g) of Section 8670.56.5 because of effects on natural resources shall be commenced within five years from the date of the discovery of the facts or circumstances which are the basis for the cause of action.

(e) Any action to compel the removal of oil or the restoration and rehabilitation of wildlife and wildlife habitat shall be commenced within five years from the date of discovery of the facts or

circumstances which constitute a violation of this chapter or Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(f) For purposes of subdivisions (b), (c), (d), and (e), "date of discovery" means the actual date that facts sufficient to establish that a violation of this chapter or Division 7.8 (commencing with Section 8750) of the Public Resources Code has occurred are discovered by a peace officer appointed pursuant to Section 851 of the Fish and Game Code.

(g) The administrator may adopt regulations prescribing procedures for the implementation of this section.

CHAPTER 614

An act to amend Section 1371 of, to add Sections 1363.5, 1370.2, 1371.4, 1371.8, 1373.65, 1374.8, and 1397.5 to, the Health and Safety Code, to add Sections 791.27, 796.04, and 11512.55 to, the Insurance Code, relating to health coverage.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 1363.5 is added to the Health and Safety Code, to read:

1363.5. (a) A plan shall disclose or provide for the disclosure to the commissioner and providers under contract with the plan the process the plan uses to authorize or deny health care services under the benefits provided by the plan. A plan shall also disclose those processes to enrollees or persons designated by an enrollee upon request. The criteria used by plans to determine whether to authorize or deny health care services shall:

(1) Be developed with involvement from actively practicing health care providers.

(2) Be developed using sound clinical principles and processes.

(3) Be evaluated, and updated if necessary, at least annually.

(4) If used as the basis of a decision to deny services in a specified case under review, be disclosed to the provider or the enrollee, or both, in that specified case, upon request.

(b) Subdivision (a) shall not apply to plans that, prior to January 1, 1995, have entered into a contract with an entity that performs determinations for the authorization of health care services to plan enrollees where the contract prohibits disclosure of utilization guidelines and other procedures used to make those determinations. Plans that have existing contracts of this type prior to January 1, 1995, shall not be subject to subdivision (a) until January 1, 1996.

SEC. 2. Section 1370.2 is added to the Health and Safety Code, to read:

1370.2. Upon an appeal to the plan of a contested claim, the plan shall refer the claim to the medical director or other appropriately licensed health care provider. This health care provider or the medical director shall review the appeal and, if he or she determines that he or she is competent to evaluate the specific clinical issues presented in the claim, shall make a determination on the appealed claim. If the health care provider or medical director determines that he or she is not competent to evaluate the specific clinical issues of the appealed claim, prior to making a determination, he or she shall consult with an appropriately licensed health care provider who is competent to evaluate the specific clinical issues presented in the claim. For the purposes of this section, "competent to evaluate the specific clinical issues" means that the reviewer has education, training, and relevant expertise that is pertinent for evaluating the specific clinical issues that serve as the basis of the contested claim. The requirements of this section shall apply to claims that are contested on the basis of a clinical issue, the necessity for treatment, or the type of treatment proposed or utilized. The plan shall determine whether or not to use an appropriate specialist provider in the review of contested claims.

SEC. 3. Section 1371 of the Health and Safety Code is amended to read:

1371. A health care service plan, including a specialized health care service plan, shall reimburse claims or any portion of any claim, whether in state or out of state, as soon as practical, but no later than 30 working days after receipt of the claim by the health care service plan, or if the health care service plan is a health maintenance organization, 45 working days after receipt of the claim by the health care service plan, unless the claim or portion thereof is contested by the plan in which case the claimant shall be notified, in writing, that the claim is contested or denied, within 30 working days after receipt of the claim by the health care service plan, or if the health care service plan is a health maintenance organization, 45 working days after receipt of the claim by the health care service plan. The notice that a claim is being contested shall identify the portion of the claim that is contested and the specific reasons for contesting the claim.

If an uncontested claim is not reimbursed by delivery to the claimants' address of record within the respective 30 or 45 working days after receipt, interest shall accrue at the rate of 10 percent per annum beginning with the first calendar day after the 30- or 45-working day period.

For the purposes of this section, a claim, or portion thereof, is reasonably contested where the plan has not received the completed claim and all information necessary to determine payer liability for the claim, or has not been granted reasonable access to information concerning provider services. Information necessary to determine payer liability for the claim includes, but is not limited to, reports of investigations concerning fraud and misrepresentation, and necessary consents, releases, and assignments, a claim on appeal, or

other information necessary for the plan to determine the medical necessity for the health care services provided.

If a claim or portion thereof is contested on the basis that the plan has not received all information necessary to determine payer liability for the claim or portion thereof and notice has been provided pursuant to this section, then the plan shall have 30 working days or, if the health care service plan is a health maintenance organization, 45 working days after receipt of this additional information to complete reconsideration of the claim.

SEC. 4. Section 1371.4 is added to the Health and Safety Code, to read:

1371.4. (a) A health care service plan, or its contracting medical providers, shall provide 24-hour access for enrollees and providers to obtain timely authorization for medically necessary care, for circumstances where the enrollee has received emergency services and care as defined in Section 1317.1, is stabilized, but the treating provider believes that the enrollee may not be transferred or discharged safely. A physician and surgeon shall be available for consultation and for resolving disputed requests for authorizations. A health care service plan that does not require prior authorization as a prerequisite for payment for necessary medical care following stabilization of an emergency condition need not satisfy the requirements of this subdivision.

(b) A health care service plan shall reimburse providers for emergency services and care, as defined in Section 1317.1, provided to its enrollees, until the care results in stabilization of the enrollee, except as provided in subdivision (c).

(c) Payment for emergency services and care may be denied only if the health care service plan reasonably determines that the emergency services and care were never performed; provided that a health care service plan may deny reimbursement to a provider for a medical screening examination in cases when the plan enrollee did not require emergency services and care and the enrollee reasonably should have known that an emergency did not exist. As long as federal or state law requires that emergency services and care be provided without first questioning the patient's ability to pay, a health care service plan shall not require a provider to obtain authorization prior to the provision of emergency services and care.

(d) If there is a disagreement between the health care service plan and the provider regarding the need for necessary medical care, the plan shall assume responsibility for the care of the patient either by having its medical personnel personally take over the case of the patient within a reasonable amount of time after the disagreement, or by having a general acute care hospital under contract with the plan agree to accept the transfer of the patient as provided in Section 1317.2, Section 1317.2a, or other pertinent statute. However, this requirement shall not apply to necessary medical care provided in hospitals outside the service area of the health care service plan. If the health care service plan fails to satisfy the requirements of this

subdivision, further necessary care shall be deemed to have been authorized by the plan. Payment for this care may not be denied.

(e) A health care service plan may delegate the responsibilities enumerated in this section to the plan's contracting medical providers.

(f) Subdivisions (b), (c), (d), and (g) shall not apply with respect to either a provider with which the health care service plan has a contract that includes the provision of emergency services and care and necessary medical care or a health care service plan that has 3,500,000 enrollees and maintains a prior authorization system which includes the availability by telephone within 30 minutes of an emergency physician who is on duty at an emergency department of a general acute care hospital.

(g) The Department of Corporations shall adopt by July 1, 1995, on an emergency basis, regulations governing instances when an enrollee requires medical care following stabilization of an emergency condition, including appropriate time frames for a health care service plan to respond to requests for treatment authorization.

SEC. 5. Section 1371.8 is added to the Health and Safety Code, to read:

1371.8. A health care service plan that authorizes a specific type of treatment by a provider shall not rescind or modify this authorization after the provider renders the health care service in good faith and pursuant to the authorization. This section shall not be construed to expand or alter the benefits available to the enrollee or subscriber under a plan.

SEC. 6. Section 1373.65 is added to the Health and Safety Code, immediately preceding Section 1373.7, to read:

1373.65. (a) When a plan terminates a contract with an entire medical group or individual practice association, the plan shall notify enrollees who have selected that medical group or individual practice association of the termination.

(b) When a plan terminates a contractual arrangement with an individual provider within a medical group or individual practice association, the plan may request that medical group or individual practice association to notify the enrollees who are patients of that provider of the termination.

(c) A plan shall disclose the reasons for the termination of a contract with a provider to the provider only when the termination occurs during the contract year.

(d) Notwithstanding subdivision (c), whenever a plan indicates that a provider's contract is being terminated for quality of care reasons, it shall state specifically what those reasons are.

SEC. 7. Section 1374.8 is added to the Health and Safety Code, to read:

1374.8. A health care service plan shall not release any information to an employer that would directly or indirectly indicate to the employer that an employee is receiving or has received services from a health care provider covered by the plan unless

authorized to do so by the employee. An insurer that has, pursuant to an agreement, assumed the responsibility to pay compensation pursuant to Article 3 (commencing with Section 3750) of Chapter 4 of Part 1 of Division 4 of the Labor Code, shall not be considered an employer for the purposes of this section. Nothing in this section prohibits a health care service plan from releasing relevant information described in this section for the purposes set forth in Chapter 12 (commencing with Section 1871) of Part 2 of Division 1 of the Insurance Code.

SEC. 8. Section 1397.5 is added to the Health and Safety Code, to read:

1397.5. (a) The commissioner shall make and file annually with the Department of Corporations as a public record, an aggregate summary of complaints against plans filed with the commissioner by enrollees or subscribers. This summary shall include at least all of the following information:

(1) The total number of complaints filed.

(2) The types of complaints.

(b) The summary set forth in subdivision (a) shall include the following disclaimer:

THIS INFORMATION IS PROVIDED FOR STATISTICAL PURPOSES ONLY. THE COMMISSIONER OF CORPORATIONS HAS NEITHER INVESTIGATED NOR DETERMINED WHETHER THE COMPLAINTS COMPILED WITHIN THIS SUMMARY ARE REASONABLE OR VALID.

(c) Nothing in this section shall require or authorize the disclosure of complaints filed with or received by the commissioner and made confidential pursuant to any other provision of law including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). Nothing in this section shall affect any other provision of law including, but not limited to, the California Public Records Act and the Information Practices Act of 1977.

SEC. 9. Section 791.27 is added to the Insurance Code, immediately following Section 791.26, to read:

791.27. A disability insurer that provides coverage for hospital, medical, or surgical expenses shall not release any information to an employer that would directly or indirectly indicate to the employer that an employee is receiving or has received services from a health care provider covered by the plan unless authorized to do so by the employee. An insurer that has, pursuant to an agreement, assumed the responsibility to pay compensation pursuant to Article 3 (commencing with Section 3750) of Chapter 4 of Part 1 of Division 4 of the Labor Code, shall not be considered an employer for the purposes of this section. Nothing in this section prohibits a disability insurer from releasing relevant information described in this section

for the purposes set forth in Chapter 12 (commencing with Section 1871) of Part 2 of Division 1.

SEC. 10. Section 796.04 is added to the Insurance Code, immediately following Section 796.03, to read:

796.04. A disability insurer that provides coverage for hospital, medical, or surgical expenses and a nonprofit hospital service plan that authorizes a specific type of treatment for services covered under a policyholder's contract or plan by a provider shall not rescind or modify this authorization after the provider renders the health care service in good faith and pursuant to the authorization. This section shall not be construed to expand or alter the benefits available or the terms and conditions of the contract as may be agreed upon between a policyholder, certificate holder, or trust, and the insurer.

SEC. 11. Section 11512.55 is added to the Insurance Code, immediately preceding Section 11512.6, to read:

11512.55. Notwithstanding any other provision of law, a nonprofit hospital service plan shall not release any information to an employer that would directly or indirectly indicate to the employer that an employee is receiving or has received services from a health care provider covered by the plan. An insurer that has, pursuant to an agreement, assumed the responsibility to pay compensation pursuant to Article 3 (commencing with Section 3750) of Chapter 4 of Part 1 of Division 4 of the Labor Code, shall not be considered an employer for the purposes of this section. Nothing in this section prohibits a nonprofit hospital service plan from releasing relevant information described in this section for the purposes set forth in Chapter 12 (commencing with Section 1871) of Part 2 of Division 1 of the Insurance Code.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 615

An act to amend Section 53201 of the Government Code, relating to local agencies.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

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

SECTION 1. Section 53201 of the Government Code is amended to read:

53201. (a) The legislative body of a local agency, subject to conditions as may be established by it, may provide for any health and welfare benefits for the benefit of its officers, employees, retired employees, and retired members of the legislative body, as provided in subdivision (b), who elect to accept the benefits and who authorize the local agency to deduct the premiums, dues, or other charges from their compensation, to the extent that the charges are not covered by payments from funds under the jurisdiction of the local agency as permitted by Section 53205.

(b) The legislative body of a local agency may also provide for the continuation of any health and welfare benefits for the benefit of former elective members of the legislative body who (1) served in office after January 1, 1981, and whose total service at the time of termination is not less than 12 years, or (2) have completed one or more terms of office, but less than 12 years, and who agree to and do pay the full costs of the health and welfare benefits.

(c) (1) Notwithstanding any other provision of law, a legislative body of a local agency that provided benefits pursuant to subdivision (b) to former elective members of the legislative body before the effective date of Senate Bill 1893 of the 1993–94 Regular Session of the Legislature, shall not provide those benefits to any person first elected to a term of office that begins on or after January 1, 1995, unless the recipient participates on a self-pay basis, or was fully vested prior to January 1, 1995, as provided in subdivision (b).

(2) A legislative body of a local agency that did not provide benefits pursuant to subdivision (b) to former elective members of the legislative body before January 1, 1994, shall not provide those benefits to former elective members of the legislative body after January 1, 1994, unless the recipients participate on a self-pay basis.

(3) A legislative body of a local agency that provided benefits pursuant to subdivision (b) to former elective members of the legislative body before January 1, 1994, may continue to provide those benefits to those members who received those benefits before January 1, 1994.

(d) The legislative body of a local agency that is a local hospital district may provide for any health and welfare benefits for the benefit of (1) members of its medical staff, employees of the medical

staff members, and the dependents of both groups on a self-pay basis; and (2) employees of any entity owned, managed, controlled, or similarly affiliated with, the legislative body of the local hospital district, and their dependents, on a self-pay basis.

SEC. 2. If any provision of this act or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

CHAPTER 616

An act to amend Section 55601.6 of the Food and Agricultural Code, relating to food, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1994. Filed with Secretary of State September 19, 1994.]

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

SECTION 1. Section 55601.6 of the Food and Agricultural Code is amended to read:

55601.6. (a) To provide funds to carry out Section 55601.5, each processor who crushes more than 100 tons of grapes in California shall pay to the secretary the amount determined by the secretary to be necessary to cover these costs, but not to exceed ten cents ($0.10) per ton of grapes received for crushing, fresh weight equivalent, during each marketing season beginning July 1 and ending the following June 30. However, five cents ($0.05) per ton of grapes received for crushing, or one-half of the fee if the fee is less than ten cents ($0.10), shall be paid by the processor who crushes grapes and five cents ($0.05) per ton of grapes received for crushing, including any grapes produced by the processor, or one-half of the fee if the fee is less than ten cents ($0.10), shall be paid by the processor who crushes grapes and may be deducted from moneys owed to the producer.

(b) The amount of the fee shall be paid to the secretary on or before January 10 of each year on all grapes received for crushing through December 15. The amount of the fee on any grapes received for crushing after December 15 shall be paid to the secretary on or before June 30 of that marketing season.

(c) The secretary may fix the fee at a lesser amount and may adjust the fee from marketing season to marketing season.

(d) Any processor who crushes grapes who fails, neglects, or refuses to pay the required fee shall be in violation of this chapter as provided in subdivision (i) of Section 55601.5. Any processor who crushes grapes shall not be entitled to pass the penalty on to the

producer of the grapes.

(e) If the secretary conducts an objective measurement survey pursuant to Section 55612, the fee charged pursuant to subdivision (a) may be increased by not more than two cents ($0.02) per ton of grapes received for crushing, fresh weight equivalent, to cover the costs of the survey. The same ratio of payment between processor and producer shall be maintained if the fee is increased pursuant to this subdivision.

(f) If the secretary conducts an acreage survey pursuant to Section 55613, he or she may increase the fee charged pursuant to subdivision (a) by not more than four cents ($0.04) per ton of grapes received for crushing, fresh weight equivalent, to cover costs of the survey. The same ratio of payment between processor and producer shall be maintained if the fee is increased pursuant to this subdivision.

(g) The fee authorized by subdivision (a) for the reports required to be prepared by the secretary pursuant to Section 55601.5 and the increase in that fee authorized by subdivisions (e) and (f) for the surveys authorized by Sections 55612 and 55613 shall be established by the director so as to generate only the amount of revenue that the secretary reasonably anticipates will be needed to cover the cost incurred by the secretary in gathering and producing the reports required by Section 55601.5, in conducting the surveys authorized by Sections 55612 and 55613, and in conducting related enforcement activities. The funds generated by the fees authorized by this section shall only be used for the purpose of gathering the information and producing the reports required to be prepared by the secretary pursuant to Section 55601.5 and conducting the surveys authorized by Sections 55612 and 55613.

(h) All moneys received under this section shall be deposited in the State Treasury to the credit of the Department of Food and Agriculture Fund.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to generate the funds necessary to produce the crushed grape report this season, it is necessary that this act take effect immediately.

CHAPTER 617

An act to add Sections 19407.6 and 19668 to the Business and Professions Code, relating to horseracing.

[Approved by Governor September 17, 1994. Filed with Secretary of State September 19, 1994.]

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

SECTION 1. Section 19407.6 is added to the Business and Professions Code, to read:

19407.6. "Foaling date" means the date the horse is dropped by a mare as stated on the papers of registration.

SEC. 2. Section 19668 is added to the Business and Professions Code, to read:

19668. (a) On and after July 1, 1995, it shall be unlawful for any person to enter or accept the entry of a horse in a race upon which there is parimutuel wagering until two years after the horse's foaling date.

(b) Every person who violates this section is guilty of a misdemeanor. The board may suspend the license of any person who violates this section for a period of not more than one year.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 618

An act to add Sections 25543, 25543.1, and 25543.2 to the Health and Safety Code, relating to hazardous materials.

[Approved by Governor September 17, 1994. Filed with Secretary of State September 19, 1994.]

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

SECTION 1. Section 25543 is added to the Health and Safety Code, to read:

25543. The office shall obtain and maintain state delegation of the federal accidental release prevention program established pursuant

to subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(r)).

SEC. 2. Section 25543.1 is added to the Health and Safety Code, to read:

25543.1. (a) Any person may submit a petition to the office for the addition of a material to, or for the deletion of a material from, the acutely hazardous materials list or to revise the existing threshold planning quantities that are used as the standards for registration and RMPP compliance.

(b) A petition submitted pursuant to subdivision (a) shall be accompanied by a submission fee, to be established by the office, in consultation with the Office of Environmental Health Hazard Assessment. The fee shall be in an amount that is sufficient to pay for the reasonable costs incurred by the office and the Office of Environmental Health Hazard Assessment necessary to carry out this section. Upon the receipt of the petition and fee, the office shall transmit to the Office of Environmental Health Hazard Assessment funds sufficient to pay for the reasonable costs incurred by the Office of Environmental Health Hazard Assessment to carry out this section.

(c) An owner or operator shall not delay implementation of this article in anticipation of a ruling on a petition to delist a material or to change a threshold.

(d) The office shall notify administering agencies of petitions for adding or delisting materials or for changing thresholds and shall take comments from the administering agencies on the petitions. All comments shall be responded to in writing.

(e) The office shall notify the public of petitions for adding or delisting materials or for changing thresholds and shall take public comment on the petitions. All comments shall be responded to in writing.

(f) The office shall request the Office of Environmental Health Hazard Assessment to review the petitions and make recommendations to the office regarding the petitions.

(g) Based upon a sound and open scientific review, the Office of Environmental Health Hazard Assessment shall make recommendations on petitions for changes that better reflect current scientific knowledge regarding the necessity to include specific materials and thresholds on the list of acutely hazardous materials.

(h) The petition review by the Office of Environmental Health Hazard Assessment shall take into consideration all of the following factors:

(1) The severity of any acute adverse health effect associated with an accidental release of the material.

(2) The likelihood of an accidental release of the material.

(3) The potential magnitude of human exposure to an accidental release of the material.

(4) The results of other preexisting evaluations of the material's potential risks which take into account the factors specified in

paragraphs (1), (2), and (3), including, but not limited to, studies or research undertaken by, or on behalf of, the Environmental Protection Agency for the purpose of complying with paragraph (3) of subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412 (r) (3)).

(5) The likelihood of the material being handled in this state.

(6) The accident history of the material.

(i) Upon receipt of a recommendation made pursuant to subdivision (f), the office may add or remove a material or change an existing threshold as a requirement for this article.

(j) In reviewing a petition under this section, the office shall consider the views of local agencies that have indicated support or opposition to the petition.

SEC. 3. Section 25543.2 is added to the Health and Safety Code, to read:

25543.2. (a) A handler who intends to modify a facility which may result either in a significant increase in the amount of acutely hazardous materials handled by the facility or in a significantly increased risk in handling an acutely hazardous material, as compared to the amount of materials and the amount of risk identified in the facility's RMPP relating to the process proposed for modification, shall do all the following, prior to operating the modified facility:

(1) Where reasonably possible, notify the administering agency in writing of the handler's intent to modify the facility at least five calendar days before implementing any modifications. As part of the notification process, the handler shall consult with the administering agency when determining whether the RMPP, offsite consequence analysis, hazard and operability studies, and other relevant supporting documents should be reviewed and revised. Where prenotification is not reasonably possible, the handler shall provide written notice to the administering agency no later than 48 hours following the modification.

(2) Establish procedures to manage the proposed modification, which shall be substantially similar to the procedures specified in Section 1910.119 of Title 29 of the Code of Federal Regulations pertaining to process safety management, and notify the administering agency that the procedures have been established.

(b) The handler shall revise the appropriate documents, as required pursuant to subdivision (a), expeditiously, but not later than 60 days from the date of the facility modification.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become

operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 619

An act to amend Section 25205.6 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 17, 1994. Filed with Secretary of State September 19, 1994.]

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

SECTION 1. Section 25205.6 of the Health and Safety Code is amended to read:

25205.6. (a) On or before November 1 of each year, the department shall provide the board with a schedule of two digit SIC codes, as defined in subdivision (p) of Section 25501, as established by the United States Department of Commerce, that consists of corporations which use, generate, store, or conduct activities in this state related to hazardous materials, as defined in subdivision (k) of Section 25501, including, but not limited to, hazardous waste.

(b) Each corporation identified in the schedule adopted pursuant to subdivision (a) shall pay an annual fee, which shall be set at one hundred dollars ($100) for those corporations with 50 or more employees but less than 75 employees, three hundred dollars ($300) for those corporations with 75 or more employees, but less than 100 employees, five hundred dollars ($500) for corporations with 100 or more, but less than 250 employees, seven hundred fifty dollars ($750) for those corporations with 250 or more, but less than 500 employees, and one thousand dollars ($1,000) for corporations with 500 employees or more.

(c) The fee imposed pursuant to this section shall be paid by each corporation which is identified in the schedule adopted pursuant to subdivision (a) in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code and shall be deposited in the Hazardous Waste Control Account. The revenues shall be available, upon appropriation by the Legislature, to cover the costs of implementing this chapter.

(d) For purposes of this section, the number of employees employed by a corporation is the number of persons employed in this state for more than 500 hours during the previous calendar year for which the fee is due.

(e) This section does not apply to nonprofit corporations primarily engaged in the provision of residential social and personal care for children, the aged, and special categories of persons with some limits on their ability for self-care, as described in SIC Code 8361 of the Standard Industrial Classification (SIC) Manual

published by the United States Office of Management and Budget, 1987 Edition.

CHAPTER 620

An act to amend Sections 14570, 14571.6, 14585, and 14585.5 of, and to add and repeal Section 14571.4 of, the Public Resources Code, relating to beverage containers, and making an appropriation therefor.

[Approved by Governor September 17, 1994. Filed with Secretary of State September 19, 1994.]

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

SECTION 1. Section 14570 of the Public Resources Code is amended to read:

14570. Every dealer shall post a clear and conspicuous sign of at least 10 inches by 15 inches at each public entrance to the dealer's place of business, which specifies one of the following:

(a) The name and address, as provided by the department, of at least the certified recycling center, location, or locations, nearest to the dealer, which redeems all types of empty beverage containers at one location during at least 30 hours per week with a minimum of five hours of operation occurring during periods other than from Monday to Friday, from 9 a.m. to 5 p.m., and the toll-free telephone number established by the department for the purpose of disseminating information regarding beverage container recycling opportunities.

(b) One of the following procedures for redeeming beverage containers is available, pursuant to Section 14571.6:

(1) Beverage containers may be redeemed at all open cash registers within this place of business.

(2) Beverage containers may be redeemed at one specific location on the dealer's premises which is identified on the sign.

SEC. 2. Section 14571.4 is added to the Public Resources Code, to read:

14571.4. (a) (1) On and after January 1, 1995, and for a period not to exceed two years thereafter, the department shall certify one operator to establish the Pacific Beach Pilot Mobile Recycling Program, as a pilot program, incorporating all convenience zones in the Pacific Beach area of San Diego County.

(2) For the purposes of this section, "the Pacific Beach area of San Diego County" means the area designated in the Pacific Beach Community Plan.

(b) Notwithstanding Sections 14570 and 14571, for the duration of the pilot program, all convenience zones within the Pacific Beach area of San Diego County shall be considered served if all of the

following conditions are met:

(1) The recycling center operator meets all of the following:

(A) The center is open for business at least once each week at each of five locations, three of which are within the existing convenience zones in the Pacific Beach area of San Diego County.

(B) The center is open for business at least eight hours per day at each location.

(C) The center agrees to accept, and pay the refund value for, all eligible beverage container types.

(D) The center is certified by the department for operation in at least five locations, each of which shall be approved by the department.

(2) All dealers within the Pacific Beach area of San Diego County post a clear and conspicuous sign of at least 10 inches by 15 inches at each public entrance to the dealer's place of business, indicating the location, hours, and day of operation for each recycling location within the Pacific Beach area.

(c) A recycling center operator approved by the department, that meets the requirements of subdivision (b), shall be designated a certified recycling center and shall be eligible to apply for handling fees pursuant to Section 14585.

(d) As a condition of the continuation of the pilot program, within six months after the initiation of the pilot program, the total minimum monthly volume of beverage containers recycled by the recycling center operator at all sites combined within the Pacific Beach area of San Diego County shall be at least 120,000 containers per month.

(e) (1) On or before July 1, 1996, the department shall submit a report to the Legislature, and shall submit copies of the report to the appropriate policy committees of the Legislature, and, upon request, to any Member of the Legislature, on the effectiveness of the pilot program in meeting the goals of this division, together with a recommendation with regard to the continuance of the pilot program. The report shall include an evaluation of the effectiveness of the pilot program in avoiding increased vagrancy and crime adjacent to recycling locations and shall compare the effectiveness of the pilot program in providing convenient opportunities for beverage container recycling when compared to comparable communities which have convenience zone recycling.

(2) The law enforcement agency which has jurisdiction over the Pacific Beach area shall provide appropriate crime statistics and any other relevant information to the department so that the effectiveness of the pilot program in avoiding increased vagrancy and crime adjacent to recycling locations can be evaluated.

(f) If the department determines that it is necessary to adopt or revise regulations to implement this section, the regulations shall be adopted or revised as emergency regulations. The Office of Administrative Law shall consider these emergency regulations to be necessary for the immediate preservation of the public peace, health,

and safety, and the general welfare for the purposes of Section 11349.6 of the Government Code. Notwithstanding the 120-day period provided for in subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations shall be repealed 180 days from the effective date of the regulations.

(g) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 3. Section 14571.6 of the Public Resources Code is amended to read:

14571.6. In any convenience zone where no recycling location has been established which satisfies the requirements of Section 14571, and in any convenience zone which has exceeded the 60-day period for the establishment of a recycling center pursuant to Section 14571.7, all dealers within that zone shall, until a recycling location has been established in that zone, do one of the following:

(a) Submit to the department an affidavit form provided by the department stating that all of the following standards are being met by the dealer:

(1) The dealer redeems all empty beverage container types at all open cash registers or one designated location on the dealer's premises, during all hours that the dealer is open for business.

(2) The dealer has posted signs which meet the size and location requirements specified in subdivision (b) of Section 14570, and which conform to paragraph (2) of that subdivision.

(3) The dealer is delivering, or having delivered, all empty beverage containers received from the public to a certified recycling center or processor for recycling.

(b) Pay to the department for deposit in the fund the sum of one hundred dollars ($100) per day until a recycling location is established or until the standards for redemption specified in subdivision (a) are met.

SEC. 4. Section 14585 of the Public Resources Code is amended to read:

14585. (a) The department shall adopt guidelines and methods for paying handling fees to supermarket sites to provide an incentive for the redemption of empty beverage containers in convenience zones. The guidelines shall include, but not be limited to, all of the following:

(1) Handling fees shall be paid on a monthly basis, in the form and manner adopted by the department. The department shall require that claims for the handling fee be filed with the department not later than the first day of the second month following the month for which the handling fee is claimed as a condition of receiving any handling fee.

(2) To be eligible for any handling fee, a supermarket site recycling center shall redeem, at a minimum, 45,000 containers during the calendar month a handling fee is claimed for the period which commences on January 1, 1993, and which ends on December

31, 1993.

(3) To be eligible for any handling fee, a supermarket site recycling center shall redeem, at a minimum, 60,000 containers during the calendar month a handling fee is claimed, on or after January 1, 1994.

(4) A beverage container with a capacity of 24 fluid ounces or more shall be considered as two beverage containers for purposes of determining the eligibility percentage, any handling fee calculations, and payments.

(5) The department shall determine the number of eligible containers per site for which a handling fee will be paid as follows:

(A) The total combined annual volume of redeemed glass and plastic beverage containers, for the period July 1 through June 30 of each year, shall be divided by the total annual volume of all redeemed beverage containers for the same period. The quotient, plus one additional percentage point as an incentive, shall be used as the eligibility percentage for the calendar year immediately following the year in which the calculation was made.

(B) Each supermarket site's combined monthly volume of glass and plastic beverage containers shall be divided by the site's total monthly volume of all empty beverage container types. If the quotient is equal to, or more than, the eligibility percentage determined in subparagraph (A), the total monthly volume of the site shall be the maximum volume which is eligible for a handling fee for that month.

(C) If the quotient is less than the eligibility percentage determined in subparagraph (A), the department shall divide the volume of glass and plastic beverage containers by the eligibility percentage determined in subparagraph (A). The quotient shall be the maximum volume which is eligible for a handling fee for that month.

(6) The department shall pay a handling fee of 1.7 cents ($0.017) per eligible beverage container, as determined pursuant to paragraph (5).

(7) Notwithstanding paragraph (5), the total handling fee payment to a supermarket site shall not exceed two thousand three hundred dollars ($2,300) per month.

(8) If the eligible volume in any given month would result in handling fee payments which exceed the allocation of funds for that month, as provided in subdivision (b), sites with higher eligible monthly volumes shall receive handling fees for their entire eligible monthly volume before sites with lower eligible monthly volumes receive any handling fees.

(9) (A) If a supermarket where a supermarket site is located ceases operation for remodeling or for a change of ownership, the operator of that supermarket site shall be eligible to apply for handling fees for that site for a period of three months following the date of the closure of the supermarket.

(B) Every supermarket site operator shall promptly notify the

department of the closure of the supermarket which is the focal point of the convenience zone within which the supermarket site is located.

(C) Notwithstanding subparagraph (A), any operator who fails to provide notification to the department pursuant to subparagraph (B) shall not be eligible to apply for handling fees.

(b) The department may allocate the eighteen million five hundred thousand dollars ($18,500,000) authorized for expenditure for the payment of handling fees pursuant to subdivision (b) of Section 14581 on a monthly basis and may carry over any unexpended monthly allocation to a subsequent month or months. However, unexpended monthly allocations shall not be carried over to a subsequent fiscal year for the purpose of paying handling fees but may be carried over for any other purpose pursuant to Section 14581.

(c) The department shall not make handling fee payments to more than one certified recycling center in a convenience zone. When two or more convenience zones overlap by more than one-half mile, the department shall offer a single handling fee payment to cover the affected convenience zones. This handling fee payment shall not be split between the affected zones. The department shall stop making handling fee payments if another recycling center certifies to operate within the convenience zone without receiving payments pursuant to this section, if the department monitors the performance of the other recycling center for 60 days and determines that the recycling center is in compliance with this division. Any recycling center that locates in a convenience zone, thereby causing a preexisting recycling center to become ineligible to receive handling fee payments, is ineligible to receive any handling fee payments in that convenience zone.

(d) The department may require the operator of a supermarket site receiving handling fees to maintain records for each location where beverage containers are redeemed, and may require the supermarket site to take any other action necessary for the department to determine that the supermarket site does not receive an excessive handling fee.

(e) The department may determine and utilize a standard container per pound rate, for each material type, for the purpose of calculating volumes and making handling fee payments.

(f) The changes made to this section by Chapter 1258 of the Statutes of 1993 shall apply, notwithstanding subdivision (b), to all payments of handling fees not yet approved by the department as of October 11, 1993. In determining the eligibility percentage for handling fee payments during 1993, calculated pursuant to subparagraph (A) of paragraph (5), the department shall use data for the 12-month period ending June 30, 1992.

(g) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 5. Section 14585.5 of the Public Resources Code is amended to read:

14585.5. (a) The department shall not make handling fee payments to a supermarket site if the department determines that all empty beverage container types are not redeemed at the same physical location within the recycling location.

(b) A supermarket site that redeems all empty beverage container types at the same physical location within the recycling location, and issues script to consumers which is required to be redeemed at a nearby host business, is eligible to receive handling fee payments.

SEC. 6. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act.

It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law. However, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 621

An act to amend Section 25245.4 of, and to add Section 25245.6 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 17, 1994. Filed with Secretary of State September 19, 1994.]

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

SECTION 1. Section 25245.4 of the Health and Safety Code is amended to read:

25245.4. (a) (1) On and before December 31, 1994, a facility or transportable treatment unit operating pursuant to a permit-by-rule is exempt from any standard or regulation requiring the provision of financial assurances for the costs of closing a treatment unit of the facility or closing the transportable treatment unit that is adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245.

(2) On and after January 1, 1995, a facility or transportable treatment unit operating pursuant to a permit-by-rule shall provide financial assurances for the costs of closing a treatment unit of the facility, or closing the transportable treatment unit, as specified in the standards and regulations adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245, except that a facility operating pursuant to a permit-by-rule which operates not more than 30 days in any calendar year is not required to provide financial assurances for the costs of closure of a treatment unit pursuant to paragraph (1) of subdivision (a) of Section 25245.

(b) (1) On and before December 31, 1997, a facility or transportable treatment unit operating pursuant to a permit-by-rule is exempt from any standard or regulation requiring the provision of financial assurances for third-party liability that is adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245.

(2) On and after January 1, 1998, a facility or transportable treatment unit operating pursuant to a permit-by-rule shall provide financial assurances for third-party liability, as specified in the standards and regulations adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245.

(c) A facility or transportable treatment unit operating pursuant to a permit-by-rule is not required to provide financial assurances for postclosure maintenance pursuant to paragraph (2) of subdivision (a) of Section 25245, unless the department determines, pursuant to the regulations adopted by the department, that the facility is required to obtain a postclosure permit.

(d) (1) Notwithstanding any other provision of law, except as provided in paragraph (2), on and before December 31, 1994, a conditionally authorized generator who treats waste pursuant to Section 25200.3 is exempt from any standard or regulation adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245.

(2) On and after January 1, 1995, a conditionally authorized generator who treats waste pursuant to Section 25200.3 shall provide financial assurances for the costs of closing the treatment units, as specified in the standards and regulations adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245, but shall not be required to provide financial assurances for third-party liability damages pursuant to paragraph (1) of subdivision (a) of Section 25245, or to provide financial assurances for postclosure maintenance pursuant to paragraph (2) of subdivision (a) of Section 25245, unless the department determines, pursuant to the regulations adopted by the department that the generator is required to obtain a postclosure permit.

(e) Notwithstanding any other provision of law, a generator who treats waste pursuant to subdivision (a) or (c) of Section 25201.5 is exempt, for those activities, from any standards or regulations adopted by the department pursuant to paragraph (1) of subdivision

(a) of Section 25245 and is not required to provide financial assurances for the costs of closing the treatment units or for damage claims arising out of the operations of the unit pursuant to paragraph (1) of subdivision (a) of Section 25245, or to provide financial assurances for postclosure maintenance pursuant to paragraph (2) of subdivision (a) of Section 25245, unless the department determines, pursuant to the regulations adopted by the department, that the generator is required to obtain a postclosure permit.

SEC. 2. Section 25245.6 is added to the Health and Safety Code, to read:

25245.6. From January 1, 1994, until January 1, 1997, the department shall review the records of any releases of hazardous waste from a treatment unit within a facility or transportable treatment unit operating pursuant to a permit-by-rule, and on or before March 31, 1997, the department shall submit to the Governor and the Legislature a report concerning any incidents in which the owner or operator of such a facility or unit is held to be liable to a third party due to the operation of the facility or unit.

CHAPTER 622

An act to add Section 3600.8 to the Labor Code, to add Section 5392.3 to the Public Utilities Code, to amend Section 17149 of the Revenue and Taxation Code, and to add Section 16020.3 to the Vehicle Code, relating to employees.

[Approved by Governor September 17, 1994. Filed with Secretary of State September 19, 1994.]

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

SECTION 1. Section 3600.8 is added to the Labor Code, to read:

3600.8. (a) No employee who voluntarily participates in an alternative commute program that is sponsored or mandated by a governmental entity shall be considered to be acting within the course of his or her employment while utilizing that program to travel to or from his or her place of employment, unless he or she is paid a regular wage or salary in compensation for those periods of travel. An employee who is injured while acting outside the course of his or her employment, or his or her dependents in the event of the employee's death, shall not be barred from bringing an action at law for damages against his or her employer as a result of this section.

(b) Any alternative commute program provided, sponsored, or subsidized by an employee's employer in order to comply with any trip reduction mandates of an air quality management district or local government shall be considered a program mandated by a governmental entity. An employer's reimbursement of employee expenses or subsidization of costs related to an alternative commute

program shall not be considered payment of a wage or salary in compensation for the period of travel. If an employer's salary is not based on the hours the employee works, payment of his or her salary shall not be considered to be in compensation for the period of travel unless there is a specific written agreement between the employer and the employee to that effect. If an employer elects to provide workers' compensation coverage for those employees who are passengers in a vehicle owned and operated by the employer or an agent thereof, those employees shall be considered to be within the course of their employment, provided the employer notifies employees in writing prior to participation of the employee or coverage becoming effective.

(c) As used in this section, "governmental entity" means a regional air district, air quality management district, congestion management agency, or other local jurisdiction having authority to enact air pollution or congestion management controls or impose them upon entities within its jurisdiction.

(d) Notwithstanding any other provision of law, vanpool programs may continue to provide workers' compensation benefits to employees who participate in an alternative commute program by riding in a vanpool, in the case in which the vanpool vehicle is owned or registered to the employer.

(e) Employees of the state who participate in an alternative commute program, while riding in a vanpool vehicle that is registered to or owned by the state, shall be deemed to be within the course and scope of employment for workers' compensation purposes only.

SEC. 2. Section 5392.3 is added to the Public Utilities Code, to read:

5392.3. Notwithstanding any other provision of law, any charter-party carrier of passengers that contracts to provide a vanpool vehicle, as described in paragraph (1) of subdivision (c) of Section 17149 of the Revenue and Taxation Code, to an employer or a group of employees for the purpose of operating that vehicle for transportation to and from work shall maintain protection against liability with respect to that vehicle in the same form and amount as described in Section 5391.2.

SEC. 3. Section 17149 of the Revenue and Taxation Code is amended to read:

17149. (a) Gross income does not include compensation or the fair market value of any other benefit, except salary or wages, received by an employee from an employer for participation in any ridesharing arrangement in California, including those specified in subdivision (b).

(b) For purposes of this section, compensation or the fair market value of any other benefit received for participation in a ridesharing arrangement in California includes compensation or other benefit received for:

(1) Commuting in a vanpool.

(2) Commuting in a private commuter bus or buspool.

(3) A transit pass for use by the employee or his or her dependents, other than transit passes for use by elementary and secondary school students who are dependents of the employee.

(4) Commuting in a subscription taxipool.

(5) Commuting in a carpool.

(6) Free or subsidized parking.

(7) An employee's bicycling to or from his or her place of employment.

(8) Commuting by ferry.

(9) The use of an alternative transportation method, other than a method otherwise specified in this subdivision, that reduces the use of a motor vehicle by a single occupant to travel to or from that individual's place of employment.

(10) Travel to or from a telecommuting facility.

(c) For purposes of this section:

(1) "Vanpool" means seven or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry 7 to 15 adults, including the driver, that is used to transport those persons who commute to and from work on a regular basis.

(2) "Transit pass" means any purchase of transit rides that entitles the holder to any number of transit rides to and from the workplace, whether at a discount rate or the base fare rate.

(3) "Transit" means transportation service for use by the general public that utilizes buses, railcars, or ferries with a seating capacity of 16 or more persons.

(4) "Subscription taxipool" means a type of service in which employers or groups of employees contract with a public or private taxi operator to provide daily commuter service for a group of preassembled subscribers on a prepaid or daily fare basis following a relatively fixed route and schedule tailored to meet the needs of the subscribers.

(5) "Ridesharing arrangement" means the transportation of persons in a motor vehicle where that transportation is incidental to another purpose of the driver. The term includes ridesharing arrangements known as carpools, vanpools, and buspools.

(6) "Carpool" means two or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry less than seven adults, including the driver.

(7) "Buspool" means 16 or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry more than 15 adult passengers.

(8) "Private commuter bus" means a highway vehicle which meets all of the following criteria:

(A) Has a seating capacity of at least seven adults, including the driver.

(B) At least 50 percent of the mileage of which can be reasonably

expected to be used for the purpose of transporting employees to and from work.

(C) Is acquired by the taxpayer on or after the date of enactment of this section.

(D) With respect to which the taxpayer makes an election under this paragraph on his or her return for the taxable year in which the vehicle is placed in service.

(9) "Free or subsidized parking" means the benefit received from an employer for parking while participating in a ridesharing arrangement within California.

(10) "Alternative commute program" means any alternative transportation method or program the purpose of which is to reduce the use of a motor vehicle by a single occupant to travel to and from that individual's place of employment.

SEC. 4. Section 16020.3 is added to the Vehicle Code, to read:

16020.3. Notwithstanding any other provision of law, any employer that owns a vanpool vehicle, as described in paragraph (1) of subdivision (c) of Section 17149 of the Revenue and Taxation Code, shall maintain evidence of financial responsibility with respect to that vehicle in the same form and amount as described in Section 5391.2 of the Public Utilities Code.

SEC. 5. It is the intent of the Legislature in enacting Section 1 of this act only to declare existing law and to clarify, and not to expand, limit, or otherwise alter the ability under existing law of any employee, or his or her dependents, to bring an action at law for damages.

CHAPTER 623

An act to add Section 767.7 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 17, 1994. Filed with Secretary of State September 19, 1994.]

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

SECTION 1. Section 767.7 is added to the Public Utilities Code, to read:

767.7. (a) The Legislature finds and declares all of the following:

(1) The Legislature has encouraged, and continues to encourage, the rapid and economic development of telecommunications services to all Californians.

(2) Pursuant to Section 767.5, public utilities have dedicated a portion of their support structures to cable television corporations which have been increasingly attaching fiber optic cable that is capable of a variety of telecommunications uses. Other utilities not under the jurisdiction of the commission have also made the same

dedication.

(3) Public utility and publicly owned utility support structures are also used by entities, other than cable television corporations, with the acquiescence of the public utility and voluntary permission of the publicly owned utility, for the purpose of installing fiber optic cable in order to provide various telecommunications services.

(4) Electric public utilities are currently installing fiber optic cables on their systems to enhance their operations and better serve their customers. Fiber optic cables installed by telephone, cable, and other telecommunications corporations may be accessed by electric public utilities and publicly owned utilities to enhance their operations and better serve their customers. The access may be accomplished by contract or through the purchase of tariffed services.

(b) It is therefore the intent of the Legislature that public utilities and publicly owned utilities be fairly and adequately compensated for the use of their rights-of-way and easements for the installation of fiber optic cable, and that electric public utilities and publicly owned utilities have the ability, if they so desire, to negotiate a purchase, lease, or rent of access to those fiber optic cables for their own use.

(c) Nothing in this section shall be deemed to change existing law with respect to Section 767.5.

CHAPTER 624

An act to add Section 6359.8 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 17, 1994. Filed with Secretary of State September 19, 1994.]

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

SECTION 1. Section 6359.8 is added to the Revenue and Taxation Code, to read:

6359.8. When fruits or vegetables are shipped or transported in intrastate, interstate, or foreign commerce by common carriers, contract carriers, or proprietary carriers, as an incident to the exemption provided for in Section 6359, there are exempted from the taxes imposed by this part, the gross receipts from the sale of, and the storage, use, or other consumption in this state of, all of the following:

(a) Carbon dioxide used or employed in packing and shipping or transporting fruits or vegetables for human consumption, when those fruits or vegetables are not sold to the ultimate consumer in a package that contains the carbon dioxide.

(b) Any nonreturnable materials containing the carbon dioxide

atmosphere.

SEC. 2. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

CHAPTER 625

An act to amend Sections 40706, 40709, 40710, 40711, and 40713 of the Public Resources Code, relating to solid waste.

[Approved by Governor September 17, 1994. Filed with Secretary of State September 19, 1994.]

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

SECTION 1. The Legislature hereby finds and declares that it is the intent of the Legislature that the Local Government Technical Advisory Committee established pursuant to the California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000) of the Public Resources Code) should be comprised of members who represent the demographic diversity of the state relative to urban, suburban, and rural areas.

SEC. 2. Section 40706 of the Public Resources Code is amended to read:

40706. (a) On or before January 13, 1992, the Governor, the Senate Committee on Rules, and the Speaker of the Assembly shall appoint the members of the advisory committee who shall reflect the diversity of solid waste problems that local governments face throughout the state. The appointments shall also reflect the ethnic and cultural diversity of the state.

(b) After January 1, 1995, the appointments shall also reflect the demographic diversity of the state relative to urban, suburban, and rural areas.

(c) The appointments may be selected from recommendations provided by the County Supervisors Association of California, the League of California Cities, and the Solid Waste Association of North America.

(d) Each member shall serve a two-year term, except that the first members appointed shall classify themselves by lot so that one-half serve an initial term of one year and one-half serve an initial term of two years.

SEC. 3. Section 40709 of the Public Resources Code is amended

to read:

40709. The members of the advisory committee shall be reimbursed for expenses for travel, at the rate paid to officers, employees, experts, and agents of the state set by the Director of the Department of Personnel Administration pursuant to Section 19820 of the Government Code.

SEC. 4. Section 40710 of the Public Resources Code is amended to read:

40710. The advisory committee shall meet not less than once each calendar quarter in an open and public meeting in locations that represent the demographic diversity of the state relative to urban, suburban, and rural areas. The advisory committee may meet at other times as determined by the board. Within 30 days from the date of the advisory committee meeting, the advisory committee shall submit to the board the status of any item that it has considered at the meeting and shall submit any advice or recommendation developed at the meeting pursuant to Section 40711.

SEC. 5. Section 40711 of the Public Resources Code is amended to read:

40711. The advisory committee shall provide any advice which may be necessary to assist the board in carrying out the requirements of this division. In particular, the advisory committee shall perform the following tasks:

(a) Provide a direct liaison between the board and local governments.

(b) Advise the board of potential impacts of proposed board policies and regulations on local solid waste programs.

(c) Advise the board on the impacts of statewide programs in municipal solid waste management on local solid waste programs.

(d) Make recommendations to the board on incentive and grant programs to achieve integrated waste management objectives.

(e) Advise the board on regional approaches to integrated waste management and make recommendations to the board on strategies for implementation of programs.

SEC. 6. Section 40713 of the Public Resources Code is amended to read:

40713. This chapter shall remain operative only until January 1, 1999, or until the operative date of any amendments to Section 40401 requiring the appointment of a member to the board who has previously served as an elected local government official with demonstrated expertise in solid waste management and recycling, whichever occurs earlier, and as of January 1, 1999, this chapter is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date on which it becomes inoperative and repealed.

CHAPTER 626

An act to amend Sections 12929.14 and 12929.15 of, and to add Section 12929.27 to, the Water Code, relating to water.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 19, 1994.]

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

SECTION 1. Section 12929.14 of the Water Code is amended to read:

12929.14. It is the intent of the Legislature that nine million dollars ($9,000,000) per year be appropriated in the annual Budget Act for the 1994–95 to 1997–98 fiscal years, inclusive, to pay for programs and projects included in the environmental water program.

SEC. 2. Section 12929.15 of the Water Code is amended to read:

12929.15. From the funds appropriated to the department from the Environmental Water Fund, it is the intent of the Legislature that the department allocate at least one million dollars ($1,000,000) per year, in the 1995–96 to 1997–98 fiscal years, inclusive, to programs and projects included in the Water Quality Program. However, not more than five million dollars ($5,000,000) of the funds appropriated to the Environmental Water Fund pursuant to Section 12929.12 shall be appropriated for this purpose.

SEC. 3. Section 12929.27 is added to the Water Code, to read:

12929.27. (a) The City of Los Angeles shall submit a grant application to the department pursuant to Section 12929.21 for the purpose of implementing a voluntary water conservation program in the City of Los Angeles that benefits the ecosystem of Mono Lake.

(b) The voluntary water conservation program that is the subject of the grant application shall provide for all of the following:

(1) The use of community-based organizations, in cooperation and consultation with the Los Angeles Department of Water and Power, to carry out the program, and to perform water audits and provide and install residential, commercial, industrial, and agricultural water conservation equipment in the service area of the Los Angeles Department of Water and Power in connection with the program.

(2) The training of community-based organizations that participate in the program and the training of persons who are selected by the organizations to perform water audits, install water conservation equipment, or perform other services in connection with the program.

(3) Notice of the program to the ratepayers of the Los Angeles Department of Water and Power.

(c) The Los Angeles Department of Water and Power may not impose a charge on its ratepayers to pay for the water conservation

program, except that it may impose a fee on the ratepayers who contract for the installation of water conservation equipment in connection with the program to pay for up to 20 percent of the cost of the equipment and the installation of the equipment.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 627

An act to amend Sections 23053.1, 23095, 23790.5, 23800, and 24210 of, and to add Sections 23817.5 and 25658.1 to, the Business and Professions Code, and to amend Section 11501 of the Government Code, relating to alcoholic beverages.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 23053.1 of the Business and Professions Code is amended to read:

23053.1. The director may bring an action to enjoin a violation or the threatened violation of any provision of this division, including, but not limited to, subdivision (e) of Section 24200 regarding a licensee's failure to correct objectionable conditions following notice, or any rule promulgated pursuant to the provisions of this division. The action may be brought in the county in which the violation occurred or is threatened to occur. Any proceeding brought hereunder shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

SEC. 2. Section 23095 of the Business and Professions Code is amended to read:

23095. (a) Whenever a decision of the department suspending a license for 15 days or less becomes final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension, petition the department for permission to make an offer

in compromise, to be paid into the Alcohol Beverage Control Fund, consisting of a sum of money in lieu of serving the suspension. Upon the receipt of the petition, the department may stay the proposed suspension and cause any investigation to be made which it deems desirable and may grant the petition if it is satisfied that the following conditions are met:

(1) The public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and the payment of the sum of money will achieve the desired disciplinary purposes.

(2) The books and records of the licensee are kept in such a manner that the loss of sales of alcoholic beverages that the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefrom.

The offer in compromise shall be the equivalent of 50 percent of the estimated gross sales of alcoholic beverages for each day of the proposed suspension, and the offer in compromise shall be not less than one thousand five hundred dollars ($1,500) or more than six thousand dollars ($6,000).

(b) Notwithstanding any other provision of this division, the department may accept an offer in compromise from a retail licensee in the equivalent of 50 percent of the estimated gross sales of alcoholic beverages for each day of a proposed suspension and the offer in compromise shall be not less than seven hundred fifty dollars ($750) or more than three thousand dollars ($3,000), provided the petitioning retailer has had no other accusation filed against him or her by the department during the prior three years from the date of the petition that has resulted in a final decision to suspend or revoke the retail license concerned.

(c) (1) Notwithstanding the provisions of subdivision (a), the offer in compromise for nonretail licensees shall be the equivalent of 50 percent of the estimated gross sales of alcoholic beverages for each day of the proposed suspension, and the offer in compromise shall be not less than seven hundred fifty dollars ($750) and shall not exceed ten thousand dollars ($10,000) unless the nonretail licensee has violated Section 25500, 25502, 25503, or 25600 by giving to any licensee illegal inducements, secret rebates, or free goods amounting to more than ten thousand dollars ($10,000) in value, in which case the offer in compromise shall be equal to the value of the illegal inducements, secret rebates, or free goods given.

(2) Notwithstanding paragraph (1), any nonretail licensee who pays an offer in compromise based upon a violation in the exercise of any retail privileges of that license shall have the offer in compromise computed on estimated retail gross sales only pursuant to subdivision (a) or (b).

(3) All moneys collected as a result of penalties imposed under this subdivision shall be deposited directly in the General Fund in the State Treasury, rather than the Alcohol Beverage Control Fund as provided for in Section 25761.

SEC. 3. Section 23790.5 of the Business and Professions Code is amended to read:

23790.5. (a) It is the intent of the Legislature in enacting this section to ensure that local government shall not be preempted in the valid exercise of its land use authority pursuant to Section 23790, including, but not limited to, enacting an ordinance requiring a conditional use permit. It is also the intent of the Legislature to prevent the legislated prohibition of the concurrent retailing of beer and wine for off-premises consumption and motor vehicle fuel where the retailing of each is otherwise allowable.

(b) (1) No city, county, or city and county shall, by ordinance or resolution adopted on or after January 1, 1988, legislatively prohibit the concurrent retailing of motor vehicle fuel and beer and wine for off-sale consumption in zoning districts where the zoning ordinance allows motor vehicle fuel and off-sale beer and wine to be retailed on separate sites.

(2) On and after January 1, 1989, no city, county, or city and county ordinance or resolution adopted prior to May 5, 1987, shall have legal effect if it legislatively prohibits the concurrent retailing of motor vehicle fuel with beer and wine for off-sale consumption in zoning districts where the zoning ordinance allows beer and wine and motor vehicle fuel to be retailed on separate sites.

(3) On and after July 1, 1988, no city, county, or city and county ordinance or resolution adopted on or after May 5, 1987, shall have legal effect if it legislatively prohibits the concurrent retailing of motor vehicle fuel with beer and wine for off-sale consumption in zoning districts where the zoning ordinance allows beer and wine and motor vehicle fuel to be retailed on separate sites.

(4) This section shall not apply to a prohibition by a city, county, or city and county of the sale of beer and wine in conjunction with the sale of motor vehicle fuel if that prohibition occurs as a result of the prohibition of the combining of the sale of motor vehicle fuel with a broader class of products or uses which includes alcoholic beverages or beer and wine as a named or unnamed part of that larger class, if that prohibition was enacted before August 1, 1985.

(c) Subject to the restrictions and limitations of subdivision (b), this section shall not prevent a city, county, or city and county from denying permission, or granting conditional permission, to an individual applicant to engage in the concurrent retailing of motor vehicle fuel with beer and wine for off-premises consumption pursuant to a valid conditional use permit ordinance based on appropriate health, safety, or general welfare standards contained in the ordinance if that conditional use permit ordinance contains all of the following:

(1) A requirement for written findings.

(2) A provision for an administrative appeal if the governing body has delegated its power to issue or deny a conditional use permit.

(3) Procedures for notice of a hearing, conduct of a hearing, and an opportunity for all parties to present testimony.

(4) A requirement that the findings be based on substantial evidence in view of the whole record to justify the ultimate decision.

(d) Notwithstanding any other provision of law, establishments engaged in the concurrent sale of motor vehicle fuel with beer and wine for off-premises consumption shall abide by the following conditions:

(1) No beer or wine shall be displayed within five feet of the cash register or the front door unless it is in a permanently affixed cooler as of January 1, 1988.

(2) No advertisement of alcoholic beverages shall be displayed at motor fuel islands.

(3) No sale of alcoholic beverages shall be made from a drive-in window.

(4) No display or sale of beer or wine shall be made from an ice tub.

(5) No beer or wine advertising shall be located on motor fuel islands and no self-illuminated advertising for beer or wine shall be located on buildings or windows.

(6) Employees on duty between the hours of 10 p.m. and 2 a.m. who sell beer or wine shall be at least 21 years of age.

The standards contained in this subdivision are minimum state standards which do not limit local regulation otherwise permitted under this section.

(e) If there is a finding that a licensee or his or her employee has sold any alcoholic beverages to a minor at an establishment engaged in the concurrent sale of motor vehicle fuel with beer and wine for off-premises consumption, the alcoholic beverage license at the establishment shall be suspended for a minimum period of 72 hours. For purposes of Section 23790, the effect of such a license suspension shall not constitute a break in the continuous operation of the establishment nor a substantial change in the mode or character of operation.

(f) The provisions of this section apply to charter cities.

SEC. 4. Section 23800 of the Business and Professions Code is amended to read:

23800. The department may place reasonable conditions upon retail licensees or upon any licensee in the exercise of retail privileges in the following situations:

(a) If grounds exist for the denial of an application for a license or where a protest against the issuance of a license is filed and if the department finds that those grounds may be removed by the imposition of those conditions.

(b) Where findings are made by the department which would justify a suspension or revocation of a license, and where the imposition of a condition is reasonably related to those findings. In the case of a suspension, the conditions may be in lieu of or in addition to the suspension.

(c) Where the department issues an order suspending or revoking only a portion of the privileges to be exercised under the license.

(d) Where findings are made by the department that the licensee has failed to correct objectionable conditions within a reasonable time after receipt of notice to make corrections given pursuant to subdivision (e) of Section 24200.

SEC. 5. Section 23817.5 is added to the Business and Professions Code, to read:

23817.5. No application for an original retail off-sale beer and wine license may be made nor any original retail off-sale beer and wine license issued until January 1, 1998, for any premises where any of the following conditions exist at the time this section takes effect:

(a) The applicant premises are located in an incorporated city where the number of retail off-sale beer and wine licenses issued exceeds one license for each 2,500, or fraction thereof, inhabitants of the incorporated city.

(b) The applicant premises are located in a county where the number of retail off-sale beer and wine licenses issued exceeds one license for each 2,500, or fraction thereof, inhabitants of the county.

(c) The applicant premises are located in a city and county where the total number of retail off-sale beer and wine licenses and off-sale general licenses issued exceeds one license for each 1,250, or fraction thereof, inhabitants of the city and county.

SEC. 6. Section 24210 of the Business and Professions Code is amended to read:

24210. (a) The department may delegate the power to hear and decide to an administrative law judge appointed by the director. Any hearing before an administrative law judge shall be pursuant to the procedures, rules, and limitations prescribed in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The amendments to this section made by the act adding this subdivision shall become operative on July 1, 1995.

SEC. 7. Section 25658.1 is added to the Business and Professions Code, to read:

25658.1. (a) Notwithstanding any other provision of this division, no licensee may petition the department for an offer in compromise pursuant to Section 23095 for a second or any subsequent violation of Section 25658 that occurs within 36 months of the initial violation.

(b) Notwithstanding Section 24200, the department may revoke a license for a third violation of Section 25658 that occurs within any 36-month period. This provision shall not be construed to limit the department's authority and discretion to revoke a license prior to a third violation when the circumstances warrant that penalty.

SEC. 8. Section 11501 of the Government Code is amended to read:

11501. (a) This chapter applies to any agency as determined by the statutes relating to that agency.

(b) The enumerated agencies referred to in Section 11500 are:

Accountancy, State Board of

Air Resources Board, State

Alcohol and Drug Programs, State Department of
Architectural Examiners, California Board of
Attorney General
Auctioneer Commission, Board of Governors of
Automotive Repair, Bureau of
Barbering and Cosmetology, State Board of
Behavioral Science Examiners, Board of
Boating and Waterways, Department of
Cancer Advisory Council
Cemetery Board
Chiropractic Examiners, Board of
Security and Investigative Services, Bureau of
Community Colleges, Board of Governors of the California
Conservation, Department of
Consumer Affairs, Department of
Contractors' State License Board
Corporations, Commissioner of
Court Reporters Board of California
Dental Examiners of California, Board of
Education, State Department of
Electronic and Appliance Repair, Bureau of
Engineers and Land Surveyors, State Board of Registration for Professional
Fair Political Practices Commission
Fire Marshal, State
Food and Agriculture, Director of
Forestry and Fire Protection, Department of
Funeral Directors and Embalmers, State Board of
Geologists and Geophysicists, State Board of Registration for
Guide Dogs for the Blind, State Board of
Health Services, State Department of
Highway Patrol, Department of the California
Home Furnishings and Thermal Insulation, Bureau of
Horse Racing Board, California
Housing and Community Development, Department of
Insurance Commissioner
Labor Commissioner
Landscape Architects, State Board of
Medical Board of California, Medical Quality Review Committees and Examining Committees
Motor Vehicles, Department of
Nursing, Board of Registered
Nursing Home Administrators, Board of Examiners of
Optometry, State Board of
Osteopathic Medical Board of California
Pharmacy, California State Board of
Podiatric Medicine, Board of
Psychology, Board of
Public Employees' Retirement System, Board of Administration of

the
Real Estate, Department of
San Francisco, San Pablo and Suisun, Board of Pilot Commissioners for the Bays of
Savings and Loan Commissioner
School Districts
Secretary of State, Office of
Social Services, State Department of
Statewide Health Planning and Development, Office of
Structural Pest Control Board
Tax Preparers Program
Teacher Credentialing, Commission on
Teachers' Retirement System, State
Transportation, Department of, acting pursuant to the State Aeronautics Act
Veterinary Medicine, Board of Examiners in
Vocational Nurse and Psychiatric Technician Examiners of the State of California, Board of

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CHAPTER 628

An act relating to alcoholic beverages, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. (a) The sum of nine hundred thousand dollars ($900,000) is hereby appropriated from the Alcohol Beverage Control Fund as described in Section 25761 of the Business and Professions Code to the Department of Alcoholic Beverage Control in augmentation of Item 2100-101-081 of the Budget Act of 1994.

(b) The sum of two million six hundred thousand dollars ($2,600,000) is hereby appropriated from the Alcohol Beverage Control Fund as described in Section 25761 of the Business and Professions Code to the Department of Alcoholic Beverage Control in augmentation of Item 2100-001-081 of the Budget Act of 1994.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to timely provide for essential reforms with respect to the enforcement in this state of regulations with respect to alcoholic beverages, it is necessary that this act take effect immediately.

CHAPTER 629

An act to amend Sections 23987, 24013, and 24200 of, and to add Section 25612.5 to, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 23987 of the Business and Professions Code is amended to read:

23987. Upon the receipt by the department of an original application for any license or an application for transfer of any license, written notice thereof, consisting of a copy of the application, shall immediately be mailed by the department to the sheriff, chief of police, and district attorney of the locality in which the premises are situated, to the city or county planning director, whoever has jurisdiction, the board of supervisors of the county in which the premises are situated, if in unincorporated territory, and to the city council or other governing body of the city in which the premises are situated, if within an incorporated area.

No license shall be issued or transferred by the department until at least 30 days after the mailing by the department of the notices required by this section. The department may extend the 30-day period specified in the preceding sentence for a period not to exceed an additional 20 days, upon the written request of any local law enforcement agency that states proper grounds for extension. Proper grounds for extension are limited to the requesting agency or official being in the process of preparing either a protest or proposed conditions with respect to the issuance or transfer of a license.

SEC. 2. Section 24013 of the Business and Professions Code is amended to read:

24013. (a) Protests may be filed at any office of the department at any time within 30 days from the first date of posting the notice of intention to engage in the sale of alcoholic beverages at the premises, or within 30 days of the mailing of the notification pursuant to Section 23985.5, whichever is later.

(b) The department may reject protests, except protests made by a public agency or public official or protests made by the governing body of a city or county, if it determines the protests are false, vexatious, or without reasonable or probable cause at any time before hearing thereon, notwithstanding Section 24016 or 24300. If, after investigation, the department recommends that a license be issued notwithstanding a protest by a public agency, a public official, or the governing body of a city or county, the department shall notify the agency, official, or governing body in writing of its determination and the reasons therefor, in conjunction with the notice of hearing

provided to the protestant pursuant to Section 11509 of the Government Code. If the department rejects a protest as provided in this section and issues a license, a protestant whose protest has been rejected may, within 10 days after the issuance of the license, file an accusation with the department alleging the grounds of protest as a cause for revocation of the license and the department shall hold a hearing as provided in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Nothing in this section shall be construed as prohibiting or restricting any right which the individual making the protest might have to a judicial proceeding.

SEC. 3. Section 24200 of the Business and Professions Code is amended to read:

24200. The following are the grounds that constitute a basis for the suspension or revocation of licenses:

(a) When the continuance of a license would be contrary to public welfare or morals. However, proceedings under this subdivision are not a limitation upon the department's authority to proceed under Section 22 of Article XX of the California Constitution.

(b) Except as limited by Chapter 11 (commencing with Section 24850) and Chapter 12 (commencing with Section 25000), the violation or the causing or the permitting of a violation by a licensee of this division, any rules of the board adopted pursuant to Part 14 (commencing with Section 32001) of Division 2 of the Revenue and Taxation Code, or any rules of the department adopted pursuant to the provisions of this division, or any other penal provisions of law of this state prohibiting or regulating the sale, exposing for sale, use, possession, giving away, adulteration, dilution, misbranding, or mislabeling of alcoholic beverages or intoxicating liquors.

(c) The misrepresentation of a material fact by an applicant in obtaining a license.

(d) The plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude or under any federal law prohibiting or regulating the sale, exposing for sale, use, possession, or giving away of alcoholic beverages or intoxicating liquors or prohibiting the refilling or reuse of distilled spirits containers charged against the licensee.

(e) Failure to take reasonable steps to correct objectionable conditions on the licensed premises, including the immediately adjacent area that is owned, leased, or rented by the licensee, that constitute a nuisance within a reasonable time after receipt of notice to make those corrections from a district attorney, city attorney, county counsel, or the department, under Section 373a of the Penal Code. For the purpose of this subdivision only, "property or premises" as used in Section 373a of the Penal Code includes the area immediately adjacent to the licensed premises that is owned, leased, or rented by the licensee.

(f) Failure to take reasonable steps to correct objectionable

conditions that occur during business hours on any public sidewalk abutting a licensed premises and constitute a nuisance, within a reasonable time after receipt of notice to correct those conditions from the department. This subdivision shall apply to a licensee only upon written notice to the licensee from the department. The department shall issue this written notice upon its own determination, or upon a request from the local law enforcement agency in whose jurisdiction the premises are located, that is supported by substantial evidence that persistent objectionable conditions are occurring on the public sidewalk abutting the licensed premises. For purposes of this subdivision:

(1) "Any public sidewalk abutting a licensed premises" means the publicly owned, pedestrian-traveled way, not more than 20 feet from the premises, that is located between a licensed premises, including any immediately adjacent area that is owned, leased, or rented by the licensee, and a public street.

(2) "Objectionable conditions that constitute a nuisance" means disturbance of the peace, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking, or excessive loud noise.

(3) "Reasonable steps" means all of the following:

(A) Calling the local law enforcement agency. Timely calls to the local law enforcement agency that are placed by the licensee, or his or her agents or employees, shall not be construed by the department as evidence of objectionable conditions that constitute a nuisance.

(B) Requesting those persons engaging in activities causing objectionable conditions to cease those activities, unless the licensee, or his or her agents or employees, feel that their personal safety would be threatened in making that request.

(C) Making good faith efforts to remove items that facilitate loitering, such as furniture, except those structures approved or permitted by the local jurisdiction. The licensee shall not be liable for the removal of those items that facilitate loitering.

(4) When determining what constitutes "reasonable steps," the department shall consider site configuration constraints related to the unique circumstances of the nature of the business.

(g) Subdivision (f) shall not apply to a bona fide public eating place, as defined in Section 23038, that is so operated by a retail on-sale licensee; a hotel, motel, or similar lodging establishment, as defined in subdivision (b) of Section 25503.16; a wine growers license; a licensed beer manufacturer, as defined in Section 23357; those same or contiguous premises for which a retail licensee concurrently holds an off-sale retail beer and wine license and a beer manufacturer's license; or those same or contiguous premises at which an on-sale licensee who is licensed as a bona fide public eating place as defined in Section 23038, a hotel, motel, or similar lodging establishment as defined in subdivision (b) of Section 25503.16, a licensed beer manufacturer, as defined in Section 23357, or a wine

growers license, sells off-sale beer and wine under the licensees's on-sale license.

SEC. 4. Section 25612.5 is added to the Business and Professions Code, to read:

25612.5. (a) This section shall apply to licensees other than a retail on-sale licensee who is licensed and operates as a bona fide public eating place, as defined in Section 23038, or as a hotel, motel, or similar lodging establishment, as defined in subdivision (b) of Section 25503.16; a wine growers license; a licensed beer manufacturer, as defined in Section 23357; a retail licensee who concurrently holds an off-sale retail beer and wine license and a beer manufacturer's license for those same or contiguous premises; and a retail on-sale licensee who is licensed and operates as a bona fide public eating place, as defined in Section 23038, or as a hotel, motel, or similar lodging establishment, as defined in subdivision (b) of Section 25503.16, a licensed beer manufacturer, as defined in Section 23357, or a wine growers license, who sells off-sale beer and wine under the on-sale license on those same or contiguous premises.

(b) The Legislature finds and declares that it is in the interest of the public health, safety, and welfare to adopt operating standards as set forth in this section for specified retail premises licensed by the department. The standards set forth in this section are state standards that do not preclude the adoption and implementation of more stringent local regulations that are otherwise authorized by law.

(c) Other than as provided in subdivision (a), each retail licensee shall comply with all of the following:

(1) A prominent, permanent sign or signs stating "NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES" shall be posted in a place that is clearly visible to patrons of the licensee. The size, format, form, placement, and languages of the sign or signs shall be determined by the department. This paragraph shall apply to a licensee only upon written notice to the licensee from the department. The department shall issue this written notice only upon a request, from the local law enforcement agency in whose jurisdiction the premises are located, that is supported by substantial evidence that there is loitering adjacent to the premises.

(2) A prominent, permanent sign or signs stating "NO OPEN ALCOHOLIC BEVERAGE CONTAINERS ARE ALLOWED ON THESE PREMISES" shall be posted in a place that is clearly visible to patrons of the licensee. The size, format, form, placement, and languages of the sign or signs shall be determined by the department. This paragraph shall apply to a licensee only upon written notice to the licensee from the department. The department shall issue this written notice only upon a request, from the local law enforcement agency in whose jurisdiction the premises are located, that is supported by substantial evidence that there is drinking in public adjacent to the premises.

(3) No alcoholic beverages shall be consumed on the premises of an off-sale retail establishment, and no alcoholic beverages shall be consumed outside the edifice of an on-sale retail establishment.

(4) The exterior of the premises, including adjacent public sidewalks and all parking lots under the control of the licensee, shall be illuminated during all hours of darkness during which the premises are open for business in a manner so that persons standing in those areas at night are identifiable by law enforcement personnel. However, the required illumination shall be placed so as to minimize interference with the quiet enjoyment of nearby residents of their property.

(5) Litter shall be removed daily from the premises, including adjacent public sidewalks and all parking lots under the control of the licensee. These areas shall be swept or cleaned, either mechanically or manually, on a weekly basis to control debris.

(6) Graffiti shall be removed from the premises and all parking lots under the control of the licensee within 120 hours of application.

(7) No more than 33 percent of the square footage of the windows and clear doors of an off-sale premises shall bear advertising or signs of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. However, this latter requirement shall not apply to premises where there are no windows, or where existing windows are located at a height that precludes a view of the interior of the premises to a person standing outside the premises.

(8) Upon request of the local law enforcement agency in whose jurisdiction the licensed premises are located or at the discretion of the department, each public telephone located on off-sale premises (or located in an adjacent area under the control of the off-sale licensee) shall be equipped with devices or mechanisms that prevent persons from calling into that public telephone.

(9) A copy of the applicable operating standards shall be available during normal business hours for viewing by the general public.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 630

An act to amend Section 23958 of, and to add Section 23958.4 to, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 23958 of the Business and Professions Code is amended to read:

23958. Upon receipt of an application for a license or for a transfer of a license and the applicable fee, the department shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied qualify for a license and whether the provisions of this division have been complied with, and shall investigate all matters connected therewith which may affect the public welfare and morals. The department shall deny an application for a license or for a transfer of a license if either the applicant or the premises for which a license is applied do not qualify for a license under this division.

The department further shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4.

SEC. 2. Section 23958.4 is added to the Business and Professions Code, to read:

23958.4. (a) For purposes of Section 23958, "undue concentration" means the applicant premises for an original or premises-to-premises transfer of any retail license are located in an area where any of the following conditions exist:

(1) The applicant premises are located in a crime reporting district that has a 20 percent greater number of reported crimes, as defined in subdivision (c), than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency.

(2) As to on-sale retail license applications, the ratio of on-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

(3) As to off-sale retail license applications, the ratio of off-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.

(b) Notwithstanding Section 23958, the department may issue a license as follows:

(1) With respect to a nonretail license, a retail on-sale bona fide eating place license, a retail license issued for a hotel, motel, or other lodging establishment, as defined in subdivision (b) of Section 25503.16, a retail license issued in conjunction with a beer manufacturer's license, or a winegrower's license, if the applicant shows that public convenience or necessity would be served by the issuance.

(2) With respect to any other license, if the local governing body of the area in which the applicant premises are located determines that public convenience or necessity would be served by the issuance.

(c) For purposes of this section, the following definitions shall apply:

(1) "Reporting districts" means geographical areas within the boundaries of a single governmental entity (city or the unincorporated area of a county), that are identified by the local law enforcement agency in the compilation and maintenance of statistical information on reported crimes and arrests.

(2) "Reported crimes" means the most recent yearly compilation by the local law enforcement agency of reported offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citations.

(3) "Population within the census tract or census division" means the population as determined by the most recent United States decennial or special census. The population determination shall not operate to prevent an applicant from establishing that an increase of resident population has occurred within the census tract or census division.

(4) "Population in the county" shall be determined by the annual population estimate for California counties published by the Population Research Unit of the Department of Finance.

(5) "Retail licenses" shall include the following:

(A) Off-sale retail licenses: Type 20 (off-sale beer and wine) and Type 21 (off-sale general).

(B) On-sale retail licenses: All retail on-sale licenses, except Type 43 (on-sale beer and wine for train), Type 44 (on-sale beer and wine for fishing party boat), Type 45 (on-sale beer and wine for boat), Type 46 (on-sale beer and wine for airplane), Type 53 (on-sale general for train and sleeping car), Type 54 (on-sale general for boat), Type 55 (on-sale general for airplane), Type 56 (on-sale general for vessels of more than 1,000 tons burden), and Type 62 (on-sale general bona fide public eating place intermittent dockside license for vessels of more than 15,000 tons displacement).

(6) A "premises to premises transfer" refers to each license being separate and distinct and transferable upon approval of the department.

(d) For purposes of this section, the number of retail licenses in

the county shall be determined by the most recent yearly retail license count published by the department in its Procedure Manual.

(e) The enactment of this section shall not affect any existing rights of any holder of a retail license issued prior to April 29, 1992, whose premises were destroyed or rendered unusable as a result of the civil disturbances occurring in Los Angeles from April 29 to May 2, 1992, to reopen and operate those licensed premises.

(f) This section shall not apply where the premises have been licensed and operated with the same type license within 90 days of the application.

CHAPTER 631

An act to add Section 14089.05 to the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. It is the intent of the Legislature in enacting this act to establish a program of managed Medi-Cal services to beneficiaries residing in San Diego County. This program is to reflect four guiding principals in its design: (1) integration of privately provided managed Medi-Cal health care with public health/preventive health services to beneficiaries; (2) local accountability in the operation of the program, particularly assuring standards of quality in performance and outcome as defined by the local San Diego County community being served; (3) assured inclusion in the program of those health care providers who have historically served Medi-Cal beneficiaries and other indigent persons; and (4) choice of providers by the program's beneficiaries.

SEC. 2. Section 14089.05 is added to the Welfare and Institutions Code, to read:

14089.05. (a) (1) Pursuant to subdivision (g) of Section 14089, the department and the negotiator shall implement a multiplan pilot project in the County of San Diego, upon approval of the Board of Supervisors of the County of San Diego, for the provision of benefits under this chapter to eligible Medi-Cal recipients. The multiplan pilot project implemented in San Diego County pursuant to this section shall provide all diagnostic, therapeutic, and preventive services provided under the Medi-Cal program including dental services, and additional benefits including, but not limited to, medical-related transportation, comprehensive patient management, and referral to other support services.

(2) The County of San Diego may submit a general system design

for the implementation of the multiplan pilot project to the department for approval. The multiplan pilot project shall not be commenced until the general system design is approved by the department. The department shall propose to the county within 45 days of the initial receipt of the general system design by the department any modifications to the general system design for acceptance, rejection, or modification by the county, and the department shall approve or disapprove of the general systems design within 90 days of the initial receipt of the general system design by the department.

(3) The County of San Diego shall be eligible to receive funds transferred pursuant to paragraph (1) of subdivision (p) of Section 14163 for the development and implementation of this section. These funds in the amount allocated by the department for the County of San Diego shall be paid by the department upon the enactment of this section to the County of San Diego to reimburse a portion of the costs of the development of the pilot project. To the full extent permitted by state and federal law, these funds shall be distributed by the department for expenditure by the County of San Diego in a manner that qualifies for federal financial participation under the medicaid program and the department shall expedite the payment of the federal funds to the County of San Diego. The department shall seek additional state, federal, and other funds to pay for costs that are incurred by the County of San Diego to develop the multiplan pilot project in excess of the payment required by this section, and the department shall assist the county in obtaining the additional funds.

(b) (1) The county may establish advisory boards of consumer representatives and health care professional representatives to advise the Department of Health Services of the County of San Diego to review and comment on all aspects of the implementation of the multiplan pilot project.

(2) Notwithstanding any other provision of law, a member of an advisory board established pursuant to this section shall not be deemed to be interested in a contract entered into by the department within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if the member is a Medi-Cal recipient or if all of the following apply:

(A) The member was appointed to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations.

(B) The contract authorizes the member or the organization the member represents to provide Medi-Cal services under the multiplan pilot project.

(C) The contract contains substantially the same terms and conditions as contracts entered into with other individuals or organizations the member was appointed to represent.

(D) The member does not influence or attempt to influence the

joint advisory board or another member of the joint advisory board to recommend that the department enter into the contract in which the member is interested.

(E) The member discloses the interest to the joint advisory board and abstains from voting on any recommendation on the contract.

(F) The advisory board notes the member's disclosure and abstention in its official records.

(3) Members of the advisory boards shall not be paid compensation for activities relating to their duties as members, but members who are Medi-Cal recipients shall be reimbursed for travel and child care expenses incurred in performing their duties under this section.

(c) The multiplan pilot project general system design approved pursuant to this section shall provide that, at the discretion of the department, the County of San Diego, the department, and other appropriate entities perform all of the following in a manner that accomplishes the integration of the intake of eligible beneficiaries to the project, the assessment of beneficiary individual and family needs and circumstances, and the timely referral of beneficiaries to health care and other services to respond to their individual and family needs:

(1) Determine the eligibility of Medi-Cal applicants and recipients in a manner and environment that is accessible to the recipients and applicants.

(2) Perform enrollment activities in a manner that ensures that recipients be given the opportunity to select the provider of their choice in a manner and environment that is accessible to the recipients.

(d) Notwithstanding Section 14089 or any other provision of law, the County of San Diego, when contracting with the department pursuant to this section or subdivision (d), (i), or (j) of Section 14089, shall not be liable for damages for injury to persons or property arising out of the actions or inactions of the department, the department's other contractors, or providers of health care or other services, or Medi-Cal recipients. This section shall not relieve the County of San Diego from liability arising out of its actions or inactions.

(e) The County of San Diego, when contracting with the department pursuant to Section 14089 or this section, shall have no legal duty to provide health care or other services to Medi-Cal recipients, and shall have no financial responsibility for the department's other contractors or providers of health care or other services, except to the extent specifically set forth in contracts between the department and the county.

(f) All contracts entered into by the department and the County of San Diego pursuant to Section 14089 or this section shall not be for the benefit of any third party, and no third-party beneficiary relationship shall be established between the county and any other party, except as may be specifically set forth in contracts between the

department and the County of San Diego.

(g) The department shall report to the appropriate committees of the Legislature on the pilot project implemented pursuant to this section.

(h) For purposes of this section, "multiplan pilot project" means a pilot program authorized by this section in which a limited number of plans designated by the county to the department that shall be the only Medi-Cal managed care contracts authorized to operate within San Diego County. Two of those designated health plans, at a minimum, shall be sponsored by traditional Medi-Cal physicians or neighborhood health centers or community clinics, or a combination thereof. Two of those designated health plans, at a minimum, shall be sponsored by health systems, including hospitals and other providers.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide timely and needed efficiency in the implementation of managed health care services it is necessary that this act take effect immediately.

CHAPTER 632

An act to add Section 14018.7 to, and to add Article 2.81 (commencing with Section 14087.96) to Chapter 7 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to health care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) There exists, on both the state and federal levels, increasing interest in providing comprehensive health care services through managed care health delivery systems.

(b) Los Angeles County is one of 13 counties in the state designated to implement a managed care health authority pursuant to the report issued on March 31, 1993, by the State Department of Health Services, entitled "The State Department of Health Services' Plan for Expanding Medi-Cal Managed Care: Protecting Vulnerable Populations."

(c) Among the 9.1 million residents of Los Angeles County, nearly one-half are either Medi-Cal eligible or medically uninsured.

(d) Los Angeles County has the highest percentage of uninsured

population in the nation, and contains nearly one-half of California's uninsured population.

(e) The public health care system in Los Angeles County is among the largest in the nation, and is the major provider of last resort for all of southern California, which includes several neighboring counties that do not operate county hospitals.

(f) In Los Angeles County, public and private providers of health care services to the poor, as well as consumers of those services and their advocates, have been engaged in the process of planning for the development of a unique public-private partnership to provide for the future delivery of health care services in a managed care setting to Medi-Cal eligible and medically uninsured persons.

(g) The unique circumstances in Los Angeles County warrant a special approach for purposes of managed care health delivery systems.

SEC. 2. Section 14018.7 is added to the Welfare and Institutions Code, to read:

14018.7. (a) Notwithstanding any other provision of law, neither a member of the governing body of the commission nor a member of any advisory panel to the governing body shall be deemed to be interested in a contract entered into by the commission within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if all of the following apply:

(1) The board of supervisors or the governing body appointed the individual to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations.

(2) The contract authorizes the individual or the organization the individual represents to provide services under the local initiative.

(3) The contract contains substantially the same terms and conditions as contracts entered into with other individuals or organizations that the individual was appointed to represent.

(4) The individual does not influence or attempt to influence any advisory panel, the governing body, or any member of the governing body to enter into the contract.

(5) The individual discloses the interest to the governing body and the advisory panel, if applicable, and abstains from voting on the contract.

(6) The governing body and the advisory panel, if applicable, notes the disclosure and abstention in its official records and authorizes the contract in good faith by a vote of its membership sufficient for that purpose without counting the vote of the individual.

(b) For purposes of this section, "commission" means a nonprofit corporation established in Kern County to operate the local health plan and other health care programs owned by, or operated in, Kern County.

(c) For purposes of this section, "governing body" means the

board of directors of the nonprofit corporation established in Kern County, and "board of supervisors" means the Kern County Board of Supervisors.

SEC. 2.5. Article 2.81 (commencing with Section 14087.96) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 2.81. Managed Health Care System for Los Angeles County

14087.96. The following definitions shall apply for purposes of this article:

(a) "County" means the County of Los Angeles.

(b) "Board of supervisors" means the Board of Supervisors of the County of Los Angeles.

(c) "Commission" means the separate public agency established by the board of supervisors to operate a local initiative for health care in the county.

(d) "Local initiative" means the health plan or plans and other health care programs owned or operated by the commission established under this article, and operated pursuant to the strategic plan.

(e) "Medi-Cal managed care programs" means all those components of the Medi-Cal program that involve the restriction of access for Medi-Cal patients to particular providers or health plans and that involve managed care principles, including, but not limited to, programs such as those described in Article 2.7 (commencing with Section 14087.3), Article 2.8 (commencing with Section 14087.5), Chapter 8 (commencing with Section 14200), including pilot programs under Article 7 (commencing with Section 14490) thereof.

(f) "Health care consumer" means a Medi-Cal beneficiary or any other person eligible to receive health care services under the local initiative, including parents, legal guardians, or conservators of Medi-Cal beneficiaries and people who will receive health care services under the local initiative.

(g) "Health care consumer advocate" means an individual who, whether in a paid or unpaid capacity, only represents the interests of Medi-Cal beneficiaries or people who will receive health care under the local initiative.

(h) "Strategic plan" means the report issued on March 31, 1993, by the State Department of Health Services, entitled "The State Department of Health Services' Plan for Expanding Medi-Cal Managed Care: Protecting Vulnerable Populations."

14087.9605. (a) The board of supervisors may, by ordinance, resolution, or other action, establish a commission in order to meet the problems of delivery of publicly assisted medical care in the county and demonstrate ways of promoting quality care and cost efficiency. The health care services provided by the commission shall

include, but are not limited to, services covered under this chapter provided on a coordinated managed care basis. The commission shall operate the local initiative that provides or arranges for the delivery of health care services in all or part of the geographic area of the county, in a manner that is consistent with managed care principles, techniques, and practices directed at ensuring cost-effective and adequate access to quality care, without discrimination on the basis of medical condition, diagnosis, or illness, in an amount, duration, and scope that is sufficient to reasonably achieve its purpose for enrollees in the local initiative. If the board of supervisors establishes a commission, all rights, powers, duties, privileges, and immunities vested in the county pursuant to the contract with the department under this article shall be vested in the commission.

(b) (1) The commission shall be considered a public entity that is a local unit of government and that is separate from the county, shall file the statement required by Section 53051 of the Government Code, and shall be considered a public entity for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code. The commission, members of the commission, and employees of the commission shall be protected by the immunities applicable to public entities and public employees governed by Part 2 (commencing with Section 814) of Division 3.6 of Title 1 of the Government Code, except as provided by other statutes or regulations that apply expressly to the commission.

(2) The commission shall have all power necessary and appropriate to do all of the following:

(A) Operate programs involving health care services, including, but not limited to, the power to own and operate one or more health plans.

(B) To enter into agreements with any public or private entity or entities to provide or arrange for health care services on a capitated or noncapitated basis.

(C) To acquire, possess, and dispose of real or personal property.

(D) To employ personnel and contract for services required to meet its obligations.

(E) To sue or be sued.

(3) The commission may enter into contracts with public and private health care providers to provide health care and related services to individuals enrolled in any health plan or health program operated as part of the local initiative.

(c) Nothing in this section shall be construed to authorize the commission to operate any health care program other than the local initiative described in the strategic plan as it currently exists or as it may be amended by the department.

14087.961. Governance of the commission shall be vested in a governing body consisting of 13 members, each of whom shall have a fiduciary duty to act in the best interest of the commission and the local initiative, nominated by the following entities, and appointed by the board of supervisors:

(a) Four members shall be nominated by the board of supervisors. No more than one member nominated by the board of supervisors shall be a member of the board of supervisors and each remaining member nominated by the board of supervisors shall possess experience as a health care administrator or as a health care provider.

(b) One member shall be a representative of private hospitals that have Medi-Cal disproportionate share status, or if that status no longer exists, that serve an equivalent patient population, who shall be nominated by the Hospital Council of Southern California.

(c) One member shall be a representative of private hospitals that do not have Medi-Cal disproportionate share status, who shall be nominated by the Hospital Council of Southern California.

(d) One member shall be a representative of free and community clinics, who shall be nominated by an entity or group recognized by the board of supervisors as representing free and community clients.

(e) One member shall be a representative of federally qualified health centers, who shall be nominated by an entity or group recognized by the board of supervisors as representing federally qualified health centers.

(f) One member shall be a physician representative, who shall be nominated by the Los Angeles County Medical Association, in consultation with other physician associations within the county.

(g) One member shall be a representative of Knox–Keene licensed prepaid health plans, who shall be nominated by the California Association of Health Maintenance Organizations.

(h) One member shall be an individual who, at the time of being nominated, is a health care consumer. The initial nominee shall be nominated by the working group on the role of the consumer for the first nominee, and thereafter, by a process determined by the community advisory committee under which only health care consumers may nominate and vote for appointees.

(i) One member shall be a health care consumer advocate. The initial nominee shall be nominated by the working group on the role of the consumer for the first nominee, and thereafter, by a process determined by the community advisory committee under which only health care consumers may nominate and vote for appointees.

(j) One member shall be a children's health care provider representative, who shall be nominated by the Children's Planning Council as the coordinating entity for organizations and agencies providing direct services to, or advocacy for, children and families within the county.

14087.9615. (a) The composition of the 13-member governing body of the commission, as prescribed in Section 14087.961, shall be subject to alteration upon a two-thirds vote of the full membership of the governing body, if the action is also concurred in by an affirmative vote of at least four members of the board of supervisors; provided, however, no change in the composition of the governing board shall result in the elimination of representation by the county,

private physicians, hospitals, and other providers, clinics, or consumers and consumer advocates.

(b) Notwithstanding subdivision (a), no governing body member shall be removed except as provided in Section 14087.964.

14087.962. Members of the governing body shall either reside, be employed, or provide services in the geographic area served by the local initiative. Nominees shall be appointed to the governing body by the board of supervisors. The board of supervisors shall not deny appointment to a nominee described in subdivisions (b) to (j), inclusive, of Section 14087.961 without specific cause as set forth in Section 14087.964.

14087.9625. (a) Except for initial staggered terms, members of the governing body of the commission shall serve four-year terms.

(b) The governing body, at its first meeting, shall draw lots to determine six members whose initial terms shall be for two years, with the remaining seven initial members serving four-year terms. Individuals shall be limited to serving on the governing body for two consecutive four-year terms, and a maximum of 10 years.

14087.963. (a) The governing body of the commission shall establish rules for its proceedings. There shall be at least six meetings per year.

(b) (1) Each governing body member shall be entitled to one hundred dollars ($100) remuneration from commission funds for each governing body meeting attended, and may receive similar remuneration for attending meetings of committees of the governing body, except that the total remuneration for each governing body member for all meetings shall not exceed the sum of four hundred dollars ($400) per month, plus actual expenses incurred in attending these meetings at rates payable to county officers and employees.

(2) The per meeting rate and monthly limit of one hundred dollars ($100) and four hundred dollars ($400), respectively, may be increased by the governing body, subject to approval by the board of supervisors.

14087.9635. (a) A majority of the members of the governing body shall constitute a quorum for the transaction of business, and all official acts of the governing body shall require the affirmative vote of a majority of the members present and voting.

(b) No official act shall be approved with less than the affirmative vote of four members of the governing body, unless the number of members prohibited from voting because of conflicts of interest precludes adequate participation in the vote.

14087.964. A member of the governing body shall be removed from office if a majority of the members present and voting find that one or more of the following causes for removal exists:

(a) The member neither lives in, nor is employed in, the geographic area served by the local initiative.

(b) The member has been convicted of a crime involving corruption or any felony.

(c) The member has failed to attend three consecutive governing body meetings or a majority of the meetings in the most recent calendar year.

(d) The member has failed to discharge legal obligations as a member of a public agency.

(e) A request for removal has been submitted by the appropriate nominating entity in accordance with Section 14087.9645.

14087.9645. A member of the governing body may be removed at the request of the entity that nominated the member. The entity that nominated a member may request removal of that member for any of the following reasons:

(a) Any of the causes listed in Section 14087.964.

(b) The member no longer meets the qualifications for office or the criteria applied by the nominating entity in selecting the member as its nominee.

14087.965. (a) A request for removal under Section 14087.9645 shall be adopted by the nominating entity in the same manner as the nomination was adopted and shall be confirmed by a written request for removal delivered to the governing body, setting forth the grounds for removal.

(b) A removal under subdivision (a) shall be effective upon action by the governing body, that shall be taken at the first meeting following receipt of the written request.

(c) The nominating entity shall be legally responsible for improper removals.

(d) A nominating entity that requests removal of a governing body member shall nominate a successor within 60 days after the effective date of the removal.

14087.9655. (a) The governing body shall establish a technical advisory committee to provide technical expertise to the governing body.

(b) Members of the committee shall include, but not be limited to, a medical school representative, an epidemiologist, a pharmacist, a representative of a nursing association, a Visiting Nurse Association representative, a long-term care provider, a mental health care provider, a medical rehabilitation provider, and an expert on quality assurance monitoring.

(c) The technical advisory committee shall meet on a regular basis, and shall make recommendations and reports to the governing body.

14087.966. (a) The governing body for each geographic region served by the local initiative shall establish a community advisory committee to ensure community involvement.

(b) Each community advisory committee shall have no more than 35 members, a majority of whom shall be consumers and consumer advocates, but may also include providers.

(c) (1) The chairpersons of the community advisory committees shall comprise an executive advisory committee.

(2) It is the intent of the Legislature that a majority of the

executive advisory committee shall be consumers and consumer advocates, plus two at-large members.

(d) The executive advisory committee shall make recommendations, and shall report on its activities, to the governing body and shall be able to place matters of the governing body's agenda for consideration.

14087.9665. (a) The commission may borrow or receive funds from any person or entity as necessary to cover development costs and other actual or projected obligations of the local initiative.

(b) The county may lend funds to the commission upon such terms as the board of supervisors may establish.

(c) Notwithstanding any other provision of law, both the county and the commission shall be eligible to receive funding under subdivision (p) of Section 14163, and the local initiative shall be considered for all purposes to satisfy the requirements of subdivision (p) of Section 14163.

14087.967. To the full extent permitted by federal law, the department and the commission may enter into contracts to provide or arrange for health care services for any or all persons who are eligible to receive benefits under the Medi-Cal program. The contracts may be on an exclusive or nonexclusive basis, and shall include payment provisions on any basis negotiated between the department and the commission. In addition, health plans or programs operated by the commission as part of the local initiative may also include, but are not limited to, individuals covered under Title 18 of the Social Security Act (Subchapter 18 (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code), individuals employed by public agencies and private businesses, and uninsured or indigent patients.

14087.9675. (a) The auditor-controller of the county, at those intervals the auditor-controller deems appropriate, but no less frequently than annually, shall conduct a review of the fiscal condition of the commission, report the findings to the commission and the board of supervisors, and provide a copy of the findings to any public agency upon request.

(b) At the county auditor-controller's discretion, other operational or financial audits of the commission may be conducted.

(c) Upon the written request of the county auditor-controller, the commission shall provide full access to all commission records and documents as necessary to allow the county auditor-controller to perform the activities authorized by this section.

14087.968. Notwithstanding any other provision of law, the county shall not be liable for any damages or losses, whether financial or in any other form, that may result from the reliance of any person, entity, or agency on the actions or omissions of, or the findings made by, the auditor-controller under this section.

14087.9685. (a) Notwithstanding any other provision of law, any obligation of the commission and its local initiative, statutory, contractual, or otherwise, shall be an obligation solely of the

commission and shall not be an obligation of the county or of the state. Except as otherwise provided in this article, neither the county nor the state shall be liable for any act or omission of the commission.

(b) Except as agreed to by contract with the county, no liability of the commission shall become an obligation of the county upon either termination of the commission and its local initiative or the liquidation or disposition of the commission's remaining assets.

(c) All claims for money damages against the commission shall be governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as otherwise provided by other statutes or regulations that expressly apply to the commission.

14087.969. Notwithstanding any other provision of law, neither a member of the governing body of the commission nor a member of any advisory panel to the governing body shall be deemed to be interested in a contract entered into by the commission within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if all of the following apply:

(a) The board of supervisors or the governing body appointed the individual to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations.

(b) The contract authorizes the individual or the organization the individual represents to provide services under the local initiative.

(c) The contract contains substantially the same terms and conditions as contracts entered into with other individuals or organizations that the individual was appointed to represent.

(d) The individual does not influence or attempt to influence any advisory panel, the governing body, or any member of the governing body to enter into the contract.

(e) The individual discloses the interest to the governing body and the advisory panel, if applicable, and abstains from voting on the contract.

(f) The governing body and the advisory panel, if applicable, notes the disclosure and abstention in its official records and authorizes the contract in good faith by a vote of its membership sufficient for that purpose without counting the vote of the individual.

14087.9695. The department, if at no state General Fund expense, may take all appropriate steps, in cooperation with the county and the commission, to obtain approval for a demonstration or pilot project under applicable federal laws, including, but not limited to, Section 1315 of Title 42 of the United States Code, in connection with the local initiative in the county. The project may include Medi-Cal coverage for enrollees in the local initiative who otherwise would not be covered under the Medi-Cal program. The project shall not be used to curtail existing rights with respect to eligibility and services for the Medi-Cal population, nor to obtain federal waivers of the

payment provisions applicable to federally qualified health centers or noninstitutional providers under paragraphs (10), (13), (30), and (37) of subsection (a) of Section 1396a of Title 42 of the United States Code.

14087.9697. In any transfer of functions from county employees to the commission, the commission shall continue to recognize the employee organization that represented the employees performing those functions at the time of the transfer of duties. The commission shall also be bound by the terms of any memorandum of understanding that is in effect as of the date of the transfer of functions for the duration thereof, or until replaced by a subsequent memorandum of understanding.

14087.97. The commission shall be deemed to be a public agency that is a local unit of government for purposes of all grant programs and other funding and loan guarantee programs.

14087.9705. (a) The commission shall obtain licensure as a health care service plan under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code.

(b) Commencing on the date that the commission first receives Medi-Cal capitated payments for the provision of health care services to Medi-Cal beneficiaries and the commission is in full compliance with all of the requirements regarding tangible net equity applicable to a health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code, all of the following provisions shall apply:

(1) The commission is authorized to select and design its automated management information system, subject to the requirement that the department, in cooperation with the commission, prior to making capitated payments, approve the system. The department shall test the system to ensure that the system is capable of producing detailed, accurate, and timely financial information on the financial condition of the commission, and any other information that is generally required by the department in its contracts with other local initiatives and with health care service plans.

(2) In addition to the reports required by the Department of Corporations under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code and the rules of the Commissioner of Corporations adopted and promulgated thereunder, the commission shall provide, on a monthly basis, to the department, the Department of Corporations, and the members of the commission a copy of the automated report described in subdivision (a) and a projection of assets and liabilities, including those that have been incurred but not reported, with an explanation of material increases or decreases in current or projected assets and liabilities. The explanation of increases and decreases in assets or liabilities shall be provided, upon request, to a hospital, independent physicians' practice association, or community clinic that has contracted with the commission to provide health care services.

(3) In addition to the reporting and notification requirements to which the commission is subject under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code, the chief executive officer or director of the commission shall immediately notify the department, the Department of Corporations, and the members of the commission, in writing, of any fact or facts that, in the chief executive officer's or director's reasonable and prudent judgment, is likely to result in the commission being unable to meet its financial obligations. The written notice shall describe the fact or facts, the anticipated financial consequences, and the actions that will be taken to address the anticipated consequences.

(4) In no event shall the Department of Corporations waive or vary, nor shall the department request the Department of Corporations to waive or vary, the tangible net equity requirements for a commission under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code after three years after the date of the commencement of capitated payments to the commission. Until the commission is in compliance with all of the tangible net equity requirements under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code and the rules of the Commissioner of Corporations adopted and promulgated thereunder, the commission shall develop a stop-loss program that is appropriate to the risks of the commission. The stop-loss program shall be subject to the approval of the department and the Department of Corporations.

(5) In the event the commission votes to file a petition of bankruptcy, or the board of supervisors notifies the department that it intends to terminate the commission, the department shall immediately transfer the commission's Medi-Cal beneficiaries to other managed care contractors, when the contractors are available, and the contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees. To the extent that other managed care providers are unavailable or the department determines that the transfer to the other contractors to a fee-for-service reimbursement system is in the best interest of any particular beneficiary, the department shall make that transfer to the fee-for-service system, pending the availability of managed care contractors that can demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees, or until the department determines that providing care to any particular beneficiary pursuant to a fee-for-service reimbursement system is no longer necessary to protect the continuity of care or other interests of the beneficiary. Beneficiaries who have been or who are scheduled to be transferred to a fee-for-service reimbursement system or managed care contractor may make a choice to be enrolled in another managed care system, if one is available, in full compliance with

federal freedom-of-choice requirements.

(6) The commission shall submit to a review of financial records when the department determines, based on data reported by the commission or other data received by the department, that the commission will not be able to meet its financial obligations to health care providers contracting with the commission. If the department, pursuant to a review of financial records under this paragraph, determines that the commission will not be able to meet its financial obligation to contracting health care providers for the provision of health care services, the Director of Health Services shall immediately terminate the contract between the commission and the department and shall immediately transfer the commission's Medi-Cal beneficiaries in accordance with paragraph (5) in order to ensure uninterrupted provision of health care services to beneficiaries and to minimize financial disruption. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be transferred under paragraph (5) may make a choice to be enrolled in another managed care plan, if one is available, in full compliance with federal freedom-of-choice requirements.

(7) It is the intent of the Legislature that the department shall implement Medi-Cal capitated enrollments in a manner that ensures that appropriate levels of health care services will be provided to Medi-Cal beneficiaries and that appropriate levels of administrative services will be furnished to health care providers. The contract between the department and the commission shall authorize the department to administer the number of covered Medi-Cal enrollments in a manner that ensures that the commission's provider network and administrative structure are able to provide appropriate and timely services to beneficiaries and to participating providers.

(8) In the event a commission is terminated, files for bankruptcy, or otherwise no longer functions for the purposes for which it was established, the county shall, with respect to compensation for provision of health care services to beneficiaries, occupy no greater or lesser status than any other health care provider in the disbursement of assets of the commission.

(9) Nothing in this section shall be construed to impair or diminish the authority of the Commissioner of Corporations under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code, nor shall any thing in this section be construed to reduce or otherwise limit the obligation of a commission licensed as a health care plan under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code to comply with the requirements of that chapter, and the rules of the Commissioner of Corporations adopted thereunder.

14087.971. (a) Contracts under this article between the department and the commission shall be on a nonbid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part

2 of Division 2 of the Public Contract Code.

(b) It is the intent of the Legislature that the county shall, with respect to its medical facilities and programs, occupy no greater or lesser status than any other health care provider in negotiating with the commission for contracts to provide health care services.

14087.9715. The Legislature intends that implementation of this article shall involve consultation and cooperative activities among various agencies of the state and county, and the commission. The Legislature finds and declares that those activities are in furtherance of the state's goals and efforts. The activities of the commission and its local initiative shall be recognized as state action for purposes of all statutes and regulations relating to business competition.

14087.972. Neither the commission nor its local initiative shall be considered to be an agency, division, department, or instrumentality of the county, and neither the commission nor its local initiative shall be subject to the personnel, procurement, or other operational rules of the county.

14087.9722. (a) If the commission established pursuant to this article no longer functions for the purposes for which it was established, when the commission's existing obligations have been satisfied or the commission's assets have been exhausted, the board of supervisors may, by ordinance, resolution, or other action, terminate the commission.

(b) Prior to the termination of the commission, the board of supervisors shall notify the department of its intent to terminate the commission. Within 30 days of the notification, the department shall conduct an audit of the records of the commission to determine the liabilities and assets of the commission. The department shall report its findings to the board of supervisors within 10 days of the completion of the audit. The board of supervisors shall prepare a plan to liquidate or otherwise dispose of the assets of the commission and to pay the liabilities of the commission to the extent of the commission's assets, and shall present the plan to the department within 30 days after receiving the department's audit findings.

(c) Upon termination of the commission by the board of supervisors, the county shall manage any remaining assets of the commission until superseded by a plan approved by the department.

(d) All assets of the commission remaining after the payment of the liabilities of the commission pursuant to subdivision (b) shall be disposed of pursuant to the contract entered into between the state and the commission pursuant to Section 14087.

14087.9725. (a) Nothing in this article shall be construed as amending the requirements of Section 17000.

(b) Nothing in this article shall be construed to preclude the department from expanding Medi-Cal managed care in ways other than those expressly provided in this article.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into

immediate effect. The facts constituting the necessity are:

In order to provide timely and needed efficiency in the implementation of county health services, it is necessary that this act take effect immediately.

CHAPTER 633

An act to amend Section 1343 of the Health and Safety Code, and to add Sections 14680, 14681, 14682, 14683, 14684, and 14685 to, and to add Part 2.5 (commencing with Section 5775) to Division 5 of, the Welfare and Institutions Code, relating to mental health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 1343 of the Health and Safety Code is amended to read:

1343. (a) This chapter shall apply to health care service plans and specialized health care service plan contracts as defined in subdivisions (f) and (n) of Section 1345.

(b) The commissioner may by the adoption of rules or the issuance of orders deemed necessary and appropriate, either unconditionally or upon specified terms and conditions or for specified periods, exempt from this chapter any class of persons or plan contracts if the commissioner finds the action to be in the public interest and not detrimental to the protection of subscribers, enrollees, or persons regulated under this chapter, and that the regulation of the persons or plan contracts is not essential to the purposes of this chapter.

(c) The commissioner, upon request of the Director of Health Services, shall exempt from this chapter any county-operated pilot program contracting with the State Department of Health Services pursuant to Article 7 (commencing with Section 14490) of Chapter 8 of Part 3 of Division 9 of the Welfare and Institutions Code. The commissioner may exempt non-county-operated pilot programs upon request of the State Director of Health Services. Those exemptions may be subject to conditions the Director of Health Services deems appropriate.

(d) Upon the request of the Director of Mental Health, the Commissioner of Corporations may exempt from this chapter any mental health plan contractor or any capitated rate contract under Part 2.5 (commencing with Section 5775) of Division 5 of the Welfare and Institutions Code. Those exemptions may be subject to conditions the Director of Mental Health deems appropriate.

(e) This chapter shall not apply to:

(1) A person organized and operating pursuant to a certificate issued by the Insurance Commissioner unless the entity is directly providing the health care service through those entity-owned or contracting health facilities and providers, in which case this chapter shall apply to the insurer's plan and to the insurer.

(2) A plan directly operated by a bona fide public or private institution of higher learning which directly provides health care services only to its students, faculty, staff, administration, and their respective dependents.

(3) A nonprofit corporation formed under Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(4) A person who does all of the following:

(A) Promises to provide care for life or for more than one year in return for a transfer of consideration from, or on behalf of, a person 60 years of age or older.

(B) Has obtained a written license pursuant to Chapter 2 (commencing with Section 1250) or Chapter 3.2 (commencing with Section 1569).

(C) Has obtained a certificate of authority from the State Department of Social Services.

(5) The Major Risk Medical Insurance Board when engaging in activities under Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, Part 6.3 (commencing with Section 12695) of Division 2 of the Insurance Code, and Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code.

(6) The California Small Group Reinsurance Fund.

SEC. 1.5. Part 2.5 (commencing with Section 5775) is added to Division 5 of the Welfare and Institutions Code, to read:

PART 2.5. MENTAL HEALTH MANAGED CARE CONTRACTS

5775. (a) Notwithstanding any other provision of state law, the State Department of Mental Health shall implement managed mental health care for Medi-Cal beneficiaries through fee-for-service or capitated rate contracts with mental health plans, including individual counties, counties acting jointly, any qualified individual or organization, or a nongovernmental entity. A contract may be exclusive and may be awarded on a geographic basis.

(b) Two or more counties acting jointly may agree to deliver or subcontract for the delivery of mental health services. The agreement may encompass all or any portion of the mental health services provided pursuant to this part. This agreement shall not relieve the individual counties of financial responsibility for providing these services. Any agreement between counties shall delineate each county's responsibilities and fiscal liability.

(c) The department shall offer to contract with each county for

the delivery of mental health services to that county's Medi-Cal beneficiary population prior to offering to contract with any other entity, upon terms at least as favorable as any offered to a noncounty contract provider. If a county elects not to contract with the department, does not renew its contract, or does not meet the minimum standards set by the department, the department may elect to contract with any other governmental or nongovernmental entity for the delivery of mental health services in that county and may administer the delivery of mental health services until a contract for a mental health plan is implemented. The county may not subsequently contract to provide mental health services under this part unless the department elects to contract with the county.

(d) If a county does not contract with the department to provide mental health services, the county shall transfer the responsibility for Short-Doyle Medi-Cal reimbursable mental health services and the anticipated county matching funds needed for Short-Doyle Medi-Cal mental health services in that county to the department. The amount of the anticipated county matching funds shall be determined by the department in consultation with the county, and shall be adjusted annually. The amount transferred shall be based on historical cost, adjusted for changes in the number of Medi-Cal beneficiaries and other relevant factors. The anticipated county matching funds shall be used by the department to contract with another entity for mental health services, and shall not be expended for any other purpose but the provision of those services and related administrative costs. The county shall continue to deliver non-Medi-Cal reimbursable mental health services in accordance with this division, and subject to subdivision (i) of Section 5777.

5776. (a) The department and its mental health plan contractors shall comply with all applicable federal laws, regulations, and guidelines, and, except as provided in this part, all applicable state statutes and regulations.

(b) If federal requirements that affect the provisions of this part are changed, it is the intent of the Legislature that state requirements be revised to comply with those changes.

5777. (a) (1) Except as otherwise specified in this part, a contract entered into pursuant to this part shall include a provision that the mental health plan contractor shall bear the financial risk for the cost of providing medically necessary mental health services to Medi-Cal beneficiaries irrespective of whether the cost of those services exceeds the payment set forth in the contract. If the expenditures for services do not exceed the payment set forth in the contract, the mental health plan contractor shall report the unexpended amount to the department, but shall not be required to return the excess to the department.

(2) If the mental health plan is not the county, the mental health plan may not transfer the obligation for any mental health services to Medi-Cal beneficiaries to the county. The mental health plan may purchase services from the county. The mental health plan shall

establish mutually agreed-upon protocols with the county that clearly establish conditions under which beneficiaries may obtain non-Medi-Cal reimbursable services from the county. Additionally, the plan shall establish mutually agreed-upon protocols with the county for the conditions of transfer of beneficiaries who have lost Medi-Cal eligibility to the county for care under Part 2 (commencing with Section 5600), Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850).

(3) The mental health plan shall be financially responsible for ensuring access and a minimum required scope of benefits, consistent with state and federal requirements, to the services to the Medi-Cal beneficiaries of that county regardless of where the beneficiary resides. The department shall require that the definition of medical necessity used, and the minimum scope of benefits offered, by each mental health contractor be the same, except to the extent that any variations receive prior federal approval and are consistent with state and federal statutes and regulation.

(b) Any contract entered into pursuant to this part may be renewed if the plan continues to meet the requirements of this part, regulations promulgated pursuant thereto, and the terms and conditions of the contract. Contract renewal shall be on an annual basis. Failure to meet these requirements shall be cause for nonrenewal of the contract. The department may base the decision to renew on timely completion of a mutually agreed upon plan of correction of any deficiencies, submissions of required information in a timely manner, or other conditions of the contract.

(c) To the extent permitted by federal law, either the department or the mental health plan may request that contract negotiations be reopened during the course of a contract due to substantial changes in the cost of covered benefits that result from new legislative requirements affecting the scope of services or eligible population, or other unanticipated event.

(d) The department shall immediately terminate a contract when the director finds that there is an immediate threat to the health and safety of Medi-Cal beneficiaries. Termination of the contract for other reasons shall be subject to reasonable notice of the department's intent to take that action and notification of affected beneficiaries. The plan may request a public hearing by the Office of Administrative Hearings.

(e) A plan may terminate its contract in accordance with the provisions in the contract. The plan shall provide written notice to the department at least 180 days prior to the termination or nonrenewal of the contract.

(f) Upon the request of the Director of Mental Health, the Commissioner of Corporations may exempt a mental health plan contractor or a capitated rate contract from the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code). These exemptions may be subject to conditions the director deems

appropriate. Nothing in this part shall be construed to impair or diminish the authority of the Commissioner of Corporations under the Knox-Keene Health Care Service Plan Act of 1975, nor shall anything in this part be construed to reduce or otherwise limit the obligation of a mental health plan contractor licensed as a health care service plan to comply with the requirements of the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Commissioner of Corporations promulgated thereunder. The Director of Mental Health, in consultation with the Commissioner of Corporations, shall analyze the appropriateness of licensure or application of applicable standards of the Knox-Keene Health Care Service Plan Act of 1975.

(g) The department, pursuant to an agreement with the State Department of Health Services, shall provide oversight to the mental health plans to ensure quality, access, and cost efficiency. At a minimum, the department shall, through a method independent of any agency of the mental health plan contractor, monitor the level and quality of services provided, expenditures pursuant to the contract, and conformity with federal and state law.

(h) County employees implementing or administering a managed mental health care plan act in a discretionary capacity when they determine whether or not to admit a person for care or to provide any level of care pursuant to this part.

(i) If a county chooses to discontinue operations as the local mental health plan, the new plan shall give reasonable consideration to affiliation with nonprofit community mental health agencies that were under contract with the county and that meet the mental health plan's quality and cost efficiency standards.

(j) Nothing in this part shall be construed to modify, alter, or increase the obligations of counties as otherwise limited and defined in Chapter 3 (commencing with Section 5700) of Part 2. The county's maximum obligation for services to persons not eligible for Medi-Cal shall be no more than the amount of funds remaining in the mental health subaccount pursuant to Sections 17600, 17601, 17604, 17605, 17606, and 17609 after fulfilling the Medi-Cal contract obligations.

5778. (a) This section shall be limited to mental health services reimbursed through a fee-for-service payment system.

(b) During the initial phases of the implementation of this part, as determined by the department, the mental health plan contractor and subcontractors shall submit claims under the Medi-Cal program for eligible services on a fee-for-service basis.

(c) A qualifying county may elect, with the approval of the department, to operate under the requirements of a capitated, integrated service system field test pursuant to Section 5719.5 rather than this part, in the event the requirements of the two programs conflict. A county that elects to operate under that section shall comply with all other provisions of this part that do not conflict with that section.

(d) (1) No sooner than October 1, 1994, state matching funds for

Medi-Cal fee-for-service acute psychiatric inpatient services, and associated administrative days, shall be transferred to the department. No later than July 1, 1996, upon agreement between the department and the State Department of Health Services, state matching funds for the remaining Medi-Cal fee-for-service mental health services and the state matching funds associated with field test counties under Section 5719.5 shall be transferred to the department.

(2) The State Department of Mental Health, in consultation with the State Department of Health Services, a statewide organization representing counties, and a statewide organization representing health maintenance organizations shall develop a timeline for the transfer of funding and responsibility for fee-for-service mental health services from Medi-Cal managed care plans to local mental health plans. In developing the timeline, the department shall develop screening, referral, and coordination guidelines to be used by Medi-Cal managed care plans and local mental health plans.

(e) The department shall allocate the contracted amount at the beginning of the contract period to the mental health plan. The allocated funds shall be considered to be funds of the plan that may be held by the department. The department shall develop a methodology to ensure that these funds are held as the property of the plan and shall not be reallocated by the department or other entity of state government for other purposes.

(f) Beginning in the fiscal year following the transfer of funds from the State Department of Health Services, the state matching funds for Medi-Cal mental health services shall be included in the annual budget for the State Department of Mental Health. The amount included shall be based on historical cost, adjusted for changes in the number of Medi-Cal beneficiaries and other relevant factors.

(g) Initially, the mental health plans shall use the fiscal intermediary of the Medi-Cal program of the State Department of Health Services for the processing of claims for inpatient psychiatric hospital services and may be required to use that fiscal intermediary for the remaining mental health services. The providers for other Short-Doyle Medi-Cal services shall not be initially required to use the fiscal intermediary but may be required to do so on a date to be determined by the department. The department and its mental health plans shall be responsible for the initial incremental increased matching costs of the fiscal intermediary for claims processing and information retrieval associated with the operation of the services funded by the transferred funds.

(h) The mental health plans, subcontractors, and providers of mental health services shall be liable for all federal audit exceptions or disallowances based on their conduct or determinations. The mental health plan contractors shall not be liable for federal audit exceptions or disallowances based on the state's conduct or determinations. The department and the State Department of Health Services shall work jointly with mental health plans in

initiating any necessary appeals. The State Department of Health Services may offset the amount of any federal disallowance or audit exception against subsequent claims from the mental health plan or subcontractor. This offset may be done at any time, after the audit exception or disallowance has been withheld from the federal financial participation claim made by the State Department of Health Services. The maximum amount that may be withheld shall be 25 percent of each payment to the plan or subcontractor.

(i) The mental health plans shall have sufficient funds on deposit with the department as the matching funds necessary for federal financial participation to ensure timely payment of claims for acute psychiatric inpatient services and associated administrative days. The department and the State Department of Health Services, in consultation with a statewide organization representing counties, shall establish a mechanism to facilitate timely availability of those funds. Any funds held by the state on behalf of a plan shall be deposited in a mental health managed care deposit fund and shall accrue interest to the plan. The department shall exercise any necessary funding procedures pursuant to Section 12419.5 of the Government Code and Sections 8776.6 and 8790.8 of the State Administrative Manual regarding county claim submission and payment.

(j) (1) The goal for funding of the future capitated system shall be to develop statewide rates for beneficiary, by aid category and with regional price differentiation, within a reasonable time period. The formula for distributing the state matching funds transferred to the State Department of Mental Health for acute inpatient psychiatric services to the participating counties shall be based on the following principles:

(A) Medi-Cal state General Fund matching dollars shall be distributed to counties based on historic Medi-Cal acute inpatient psychiatric costs for the county's beneficiaries and on the number of persons eligible for Medi-Cal in that county.

(B) All counties shall receive a baseline based on historic and projected expenditures up to October 1, 1994.

(C) Projected inpatient growth for the period October 1, 1994, to June 30, 1995, inclusive, shall be distributed to counties below the statewide average per eligible person on a proportional basis. The average shall be determined by the relative standing of the aggregate of each county's expenditures of mental health Medi-Cal dollars per beneficiary. Total Medi-Cal dollars shall include both fee-for-service Medi-Cal and Short-Doyle Medi-Cal dollars for both acute inpatient psychiatric services, outpatient mental health services, and psychiatric nursing facility services, both in facilities that are not designated as institutions for mental disease and for beneficiaries who are under 22 years of age and beneficiaries who are over 64 years of age in facilities that are designated as institutions for mental disease.

(D) There shall be funds set aside for a self-insurance risk pool for

small counties. For purposes of this subdivision, "small counties" means counties with less than 200,000 population.

(2) The allocation method for state funds transferred for acute inpatient psychiatric services shall be as follows:

(A) For the 1994–95 fiscal year, an amount equal to 0.6965 percent of the total shall be transferred to a fund established by small counties. This fund shall be used to reimburse mental health plans in small counties for the cost of acute inpatient psychiatric services in excess of the funding provided to the mental health plan for risk reinsurance, acute inpatient psychiatric services and associated administrative days, or for costs associated with the administration of these moneys. The methodology for use of these moneys shall be determined by the small counties, through a statewide organization representing counties, in consultation with the State Department of Mental Health.

(B) The balance of the transfer amount for the 1994–95 fiscal year shall be allocated to counties based on the following formula:

County	Percentage
Alameda	3.5991
Alpine	.0050
Amador	.0490
Butte	.8724
Calaveras	.0683
Colusa	.0294
Contra Costa	1.5544
Del Norte	.1359
El Dorado	.2272
Fresno	2.5612
Glenn	.0597
Humboldt	.1987
Imperial	.6269
Inyo	.0802
Kern	2.6309
Kings	.4371
Lake	.2955
Lassen	.1236
Los Angeles	31.3239
Madera	.3882
Marin	1.0290
Mariposa	.0501
Mendocino	.3038
Merced	.5077
Modoc	.0176
Mono	.0096
Monterey	.7351
Napa	.2909
Nevada	.1489
Orange	8.0627

Placer	.2366
Plumas	.0491
Riverside	4.4955
Sacramento	3.3506
San Benito	.1171
San Bernardino	6.4790
San Diego	12.3128
San Francisco	3.5473
San Joaquin	1.4813
San Luis Obispo	.2660
San Mateo	.0000
Santa Barbara	.0000
Santa Clara	1.9284
Santa Cruz	1.7571
Shasta	.3997
Sierra	.0105
Siskiyou	.1695
Solano	.0000
Sonoma	.5766
Stanislaus	1.7855
Sutter/Yuba	.7980
Tehama	.1842
Trinity	.0271
Tulare	2.1314
Tuolumne	.2646
Ventura	.8058
Yolo	.4043

(k) The allocation method for the state funds transferred for subsequent years for acute inpatient psychiatric and other mental health services shall be determined by the State Department of Mental Health in consultation with a statewide organization representing counties.

(*l*) The allocation methodologies described in this section shall only be in effect while federal financial participation is received on a fee-for-service reimbursement basis. When federal funds are capitated, the State Department of Mental Health, in consultation with a statewide organization representing counties, shall determine the methodology for capitation consistent with federal requirements.

(m) The formula that specifies the amount of state matching funds transferred for the remaining Medi-Cal fee-for-service mental health services shall be determined by the department in consultation with a statewide organization representing counties. This formula shall only be in effect while federal financial participation is received on a fee-for-service reimbursement basis.

(n) Upon the transfer of funds from the budget of the State Department of Health Services to the department pursuant to subdivision (d), the department shall assume the applicable program

oversight authority formerly provided by the State Department of Health Services, including, but not limited to, the oversight of utilization controls as specified in Section 14133. The mental health plan shall include a requirement in any subcontracts that all inpatient subcontractors maintain necessary licensing and certification. Mental health plans shall require that services delivered by licensed staff are within their scope of practice. Nothing in this part shall prohibit the mental health plans from establishing standards that are in addition to the minimum federal and state requirements, provided that these standards do not violate federal and state Medi-Cal requirements and guidelines.

(o) Subject to federal approval and consistent with state requirements, the mental health plan may negotiate rates with providers of mental health services.

(p) Under the fee-for-service payment system, any excess in the payment set forth in the contract over the expenditures for services by the plan shall be spent for the provision of mental health services and related administrative costs.

(q) Nothing in this part shall limit the mental health plan from being reimbursed appropriate federal financial participation for any qualified services even if the total expenditures for service exceeds the contract amount with the Department of Mental Health. Matching nonfederal public funds shall be provided by the plan for the federal financial participation matching requirement.

5779. (a) This section shall be limited to mental health services reimbursed through a capitated rate payment system.

(b) Upon mutual agreement, the department and the State Department of Health Services may combine the funds transferred under this part, other funds available pursuant to Chapter 5 (commencing with Section 17600) of Part 5 of Division 9, and federal financial participation funds to establish a contract for the delivery of mental health services to Medi-Cal beneficiaries under a capitated rate payment system. The combining of funds shall be done in consultation with a statewide organization representing counties. The combined funding shall be the budget responsibility of the department.

(c) The department, in consultation with a statewide organization representing counties, shall establish a methodology for a capitated rate payment system that is consistent with federal requirements.

(d) Capitated rate payments shall be made on a schedule specified in the contract with the mental health plan.

(e) The department may levy any necessary fines and audit disallowances to mental health plans relative to operations under this part. The mental health plans shall be liable for all federal audit exceptions or disallowances based on the plan's conduct or determinations. The mental health plan shall not be liable for federal audit exceptions or disallowances based on the state's conduct or determinations. The department shall work jointly with the mental health plan in initiating any necessary appeals. The department may

offset the amount of any federal disallowance or audit exception against subsequent payment to the mental health plan at any time. The maximum amount that may be withheld shall be 25 percent of each payment to the mental health plan.

5780. (a) This part shall only be implemented to the extent that the necessary federal waivers are obtained. The director shall execute a declaration, to be retained by the director, that a waiver necessary to implement any provision of this part has been obtained.

(b) This part shall become inoperative on the date that, and only if, the director executes a declaration, to be retained by the director, that more than 10 percent of all counties fail to become mental health plan contractors, and no acceptable alternative contractors are available, or if more than 10 percent of all funds allocated for Medi-Cal mental health services must be administered by the department because no acceptable plan is available.

SEC. 2. Section 14680 is added to the Welfare and Institutions Code, to read:

14680. (a) The Legislature finds and declares that there is a need to establish a standard set of guidelines that governs the provision of managed Medi-Cal mental health services at the local level, consistent with federal law.

(b) Therefore, in order to ensure quality and continuity, and to efficiently utilize mental health services under the Medi-Cal program, there shall be developed local managed mental health care plans for the provision of those services that are consistent with guidelines established by the State Department of Mental Health.

(c) It is the intent of the Legislature that local managed mental health care plans be developed and implemented regardless of whether other systems of Medi-Cal managed care are implemented.

(d) It is further the intent of the Legislature that Sections 14681 to 14685, inclusive, shall not be construed to mandate the participation of counties in Medi-Cal managed mental health care plans.

SEC. 2.5. Section 14681 is added to the Welfare and Institutions Code, to read:

14681. The State Department of Health Services, in consultation with the State Department of Mental Health, shall ensure that all contracts for Medi-Cal managed care include a process for screening, referral, and coordination with any local mental health managed care program established pursuant to Section 14682, of medically necessary mental health care services.

SEC. 3. Section 14682 is added to the Welfare and Institutions Code, to read:

14682. (a) Notwithstanding any other provision of state law, and to the extent permitted by federal law, the State Department of Mental Health shall be designated as the state agency responsible for development, consistent with the requirements of Section 4060, and implementation of local mental health managed care plans for Medi-Cal beneficiaries.

(b) The department shall convene a steering committee for the purpose of providing advice and recommendations on the development of Medi-Cal mental health managed care systems pursuant to subdivision (a). The committee shall include work groups to advise the department of major issues to be addressed in the managed mental health care plan. Representatives of concerned groups, including, but not limited to, beneficiaries, their families, providers, mental health professionals, statewide representatives of health care service plans, the California Mental Health Planning Council, public and private organizations, and county mental health directors, shall be invited to participate in the steering committee process.

SEC. 4. Section 14683 is added to the Welfare and Institutions Code, to read:

14683. The State Department of Mental Health shall ensure the following in the development of local managed mental health care plans:

(a) That local managed mental health care plans include a process for screening, referral, and coordination with other necessary services, including, but not limited to, health, housing, and vocational rehabilitation services. For Medi-Cal eligible children, the plans shall also provide coordination with education programs and any necessary medical or rehabilitative services, including, but not limited to, those provided under the California Children's Services Program (Article 2 (commencing with Section 248) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code) and the Child Health and Disability Prevention Program (Article 3.4 (commencing with Section 320) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code), and those provided by a fee-for-service provider or a Medi-Cal managed care plan. This subdivision shall not be construed to establish any higher level of service from a county than is required under existing law. The county mental health department and the mental health managed care plan, if it is not the county department, shall not be liable for the failure of other agencies responsible for the provision of nonmental health services to provide those services or to participate in coordination efforts.

(b) That managed mental health care plans include a system of outreach to enable beneficiaries and providers to participate in and access mental health services under the plans, consistent with existing law.

(c) That standards for quality and access developed by the department, in consultation with the steering committee established pursuant to Section 14682, are included in local managed mental health care plans.

SEC. 5. Section 14684 is added to the Welfare and Institutions Code, to read:

14684. Notwithstanding any other provision of state law, and to the extent permitted by federal law, local managed mental health

care plans, whether administered by public or private entities, shall be governed by the following guidelines:

(a) State and federal Medi-Cal funds identified for the diagnosis and treatment of mental disorders shall be used solely for those purposes. Administrative costs shall be clearly identified and shall be limited to reasonable amounts in relation to the scope of services and the total funds available. Administrative requirements shall not impose costs exceeding funds available for that purpose.

(b) The development of the local plan shall include a public planning process that includes a significant role for Medi-Cal beneficiaries, family members, mental health advocates, providers, and public and private contract agencies.

(c) The local plan shall include appropriate standards relating to quality, access, and coordination of services within a managed system of care, and costs established under the plan, and shall provide opportunities for existing Medi-Cal providers to continue to provide services under the plan, as long as the providers meet those standards.

(d) Continuity of care for current recipients of services shall be ensured in the transition to managed mental health care.

(e) Medi-Cal covered mental health services shall be provided in the beneficiary's home community, or as close as possible to the beneficiary's home community. Pursuant to the objectives of the rehabilitation option described in subdivision (a) of Section 14021.4, mental health services may be provided in a facility, a home, or other community-based site.

(f) Medi-Cal beneficiaries whose mental or emotional condition results or has resulted in functional impairment, as defined by the department, shall be eligible for covered mental health services. Emphasis shall be placed on adults with serious and persistent mental illness and children with serious emotional disturbances, as defined by the department.

(g) Each plan shall include a mechanism for monitoring the effectiveness of, and evaluating accessibility and quality of, services available. The plan shall utilize and be based upon state-adopted performance outcome measures and shall include a beneficiary satisfaction component and a grievance system for beneficiaries and providers.

(h) Each plan shall provide for culturally competent and age-appropriate services, to the extent feasible. The plan shall assess the cultural competency needs of the program. The plan shall include, as part of the quality assurance program required by Section 4070, a process to accommodate the significant needs with reasonable timeliness. The department shall provide demographic data and technical assistance. Performance outcome measures shall include a reliable method of measuring and reporting the extent to which services are culturally competent and age-appropriate.

SEC. 6. Section 14685 is added to the Welfare and Institutions Code, to read:

14685. Counties shall have the right of first refusal to serve as a local managed mental health care plan. If a county elects not to serve as a local managed mental health care plan, the State Department of Mental Health shall ensure that these services are provided.

SEC. 7. The State Department of Mental Health shall adopt emergency regulations to implement Section 1 of this act in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The initial adoption of emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Regulations adopted pursuant to this section shall remain in effect for no more than 180 days. These regulations shall be developed in consultation with a statewide organization representing counties.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To coordinate and prevent duplication of mental health services for Medi-Cal beneficiaries, to provide access to a broader system of care so that hospitalization of Medi-Cal beneficiaries and the growth in the costs for funding those services is reduced, and to provide an orderly transfer of responsibilities to the State Department of Mental Health to implement managed mental health care for Medi-Cal beneficiaries, at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 634

An act to amend Section 2085.5 of the Penal Code, relating to restitution, and making an appropriation therefor.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 2085.5 of the Penal Code is amended to read:

2085.5. (a) In any case in which a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, the Director of Corrections shall deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the State Board of Control for deposit in the Restitution Fund in the State Treasury. Any amount

so deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(b) In any case in which a prisoner owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, the Director of Corrections shall deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law. If the restitution is owed to a person who has filed an application with the Victims of Crime Program, the director shall transfer that amount to the State Board of Control for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. No deductions shall be made on behalf of victims who have not filed an application with the Victims of Crime Program. The sentencing court shall be provided a record of the payments made to victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(c) The director shall deduct and retain from the wages and trust account deposits of a prisoner, unless prohibited by federal law, an administrative fee that totals 10 percent of any amount transferred to the State Board of Control pursuant to subdivisions (a) or (b). The director shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections. The director, at his or her discretion, may retain any excess funds in the special deposit account for future reimbursement of the department's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(d) When a prisoner has both a restitution fine and a restitution order from the sentencing court, the Department of Corrections shall collect the restitution order first.

(e) If an inmate is housed at an institution that requires food to be purchased from the institution canteen for unsupervised overnight visits, and if the money for the purchase of this food is received from funds other than the inmate's wages, that money shall be exempt from restitution deductions. This exemption shall apply to the actual amount spent on food for the visit up to a maximum of fifty dollars ($50) for visits that include the inmate and one visitor, seventy dollars ($70) for visits that include the inmate and two or three visitors, and eighty dollars ($80) for visits that include the inmate and four or more visitors.

CHAPTER 635

An act to amend Section 11019 of the Government Code, and to add Section 38081 to the Health and Safety Code, relating to public contracts.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 11019 of the Government Code is amended to read:

11019. (a) Any department or authority specified in subdivision (b) may, upon determining that an advance payment is essential for the effective implementation of a program within the provisions of this section, and to the extent funds are available, advance to a community-based private nonprofit agency with which it has contracted, pursuant to federal law and related state law, for the delivery of services, not to exceed 25 percent of the annual allocation to be made pursuant to the contract and those laws, during the fiscal year to the private nonprofit agency. Advances in excess of 25 percent may be made on contracts financed by a federal program when the advances are not prohibited by federal guidelines. Advance payments may be provided for services to be performed under any contract with a total annual contract amount of four hundred thousand dollars ($400,000) or less. This amount shall be increased by 5 percent, as determined by the Department of Finance, for each year commencing with 1989. Advance payments may also be made with respect to any contract which the Department of Finance determines has been entered into with any community-based private nonprofit agency with modest reserves and potential cash-flow problems. No advance payment shall be granted if the total annual contract exceeds four hundred thousand dollars ($400,000), without the prior approval of the Department of Finance.

The specific departments and authority mentioned in subdivision (b) shall develop a plan to establish control procedures for advance payments. Each plan shall include a procedure whereby the department or authority determines whether or not an advance payment is essential for the effective implementation of a particular program being funded. Each plan is required to be approved by the Department of Finance.

(b) Subdivision (a) shall apply to the Emergency Medical Service Authority, the Department of Aging and Long-Term Care, the State Department of Alcohol and Drug Programs, the Department of Corrections, the Department of Economic Opportunity, the Employment Development Department, the State Department of Health Services, the State Department of Mental Health, the

Department of Rehabilitation, the State Department of Social Services, the Department of the Youth Authority, the State Department of Education, the area boards on developmental disabilities, the Organization of Area Boards, the Office of Statewide Health Planning and Development, and the California Environmental Protection Agency, including all boards and departments contained therein.

Subdivision (a) shall also apply to the Health and Welfare Agency which may make advance payments, pursuant to the requirements of that subdivision, to multipurpose senior services projects as established in Sections 9400 to 9413, inclusive, of the Welfare and Institutions Code.

(c) A county may, upon determining that an advance payment is essential for the effective implementation of a program within the provisions of this section, and to the extent funds are available, and not more frequently than once each fiscal year, advance to a community-based private nonprofit agency with which it has contracted, pursuant to any applicable federal or state law, for the delivery of services, not to exceed 25 percent of the annual allocation to be made pursuant to the contract and those laws, during the fiscal year to the private nonprofit agency.

SEC. 2. Section 38081 is added to the Health and Safety Code, to read:

38081. (a) Provisions shall be included in any invitation for bid or request for proposal issued and in any contract executed on or after January 1, 1996, in an amount that exceeds two hundred fifty thousand dollars ($250,000) by the State Department of Health Services, to permit the substitution of securities for any moneys withheld to ensure performance under a service or consulting service contract, provided that substitution of securities provisions shall not be required where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the state department, or with a state or federally chartered bank in California as the escrow agent, who shall then pay the moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be returned to the contractor.

(b) Alternatively, the contractor may request and the state department shall make payment of retentions earned directly to the escrow agent at the expense of the contractor. At the expense of the contractor, the contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the contractor. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the state department, pursuant to the terms of this section. The contractor shall pay to each subcontractor, not later than 20 days of receipt of the payment, the respective amount of

interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld to insure the performance of the contractor.

(c) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the state department.

The contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

Failure to include these provisions in bid and contract documents shall void any provisions for performance retentions in an affected contract.

CHAPTER 636

An act to amend Sections 20019.35, 20491, 20499, 20500, 20547, 20547.3, 20547.4, 20547.6, 20819, and 22754 of, and to add Section 20162 to, the Government Code, relating to the public employees.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 20019.35 of the Government Code is amended to read:

20019.35. (a) "Local safety member" also includes all employees of a public agency whose principal duties consist of rendering prehospital emergency medical care to ill or injured persons and who are employees designated as Emergency Medical Technician-I, Emergency Medical Technician-II, or Emergency Medical Technician-Paramedic, as defined by, respectively, Sections 1797.80, 1797.82, and 1797.84 of the Health and Safety Code.

(b) This section shall not apply to the employees of any contracting agency nor to any contracting agency unless and until the contracting agency elects to be subject to this section by amendment to its contract with the board made pursuant to Section 20461.5 or by express provision in its contract with the board.

SEC. 2. Section 20162 is added to the Government Code, to read:

20162. (a) The board may, during the course of an audit, require each state agency, school employer, including each school district represented by a school employer, and contracting agency to provide information or make available for examination or copying at a specified time and place, or both, books, papers, any data, or records, including, but not limited to, personnel and payroll records, as deemed necessary by the board to determine the correctness of

retirement benefits, reportable compensation, enrollment in, and reinstatement to the system.

(b) The information obtained from an employer under this section shall remain confidential pursuant to Sections 20134 and 20134.2.

SEC. 3. Section 20491 of the Government Code is amended to read:

20491. Contracts with school employers may include school district employees in this system only with respect to service rendered in a status in which they are not eligible for membership in the State Teachers' Retirement System.

SEC. 4. Section 20499 of the Government Code is amended to read:

20499. (a) A contracting agency by express provision or by amendment to its contract may provide that, notwithstanding any other provision of this part, service which was in fact also covered under the federal system shall not be deemed as service which was also covered under the federal system, for all purposes of this part, except for the benefits provided by Article 6 (commencing with Section 21380) of Chapter 9. An amendment shall only be applicable to persons who are employed on and after the effective date of the amendment.

(b) The amendment made to this section during the 1993–94 Regular Session of the Legislature shall apply only to a contracting agency that includes this section in its contract on and after January 1, 1995.

SEC. 5. Section 20500 of the Government Code is amended to read:

20500. (a) Notwithstanding any other provision of this part, a contracting agency and its employees may agree, in writing, to share the costs of any optional benefit which is inapplicable to a contracting agency unless and until the agency elects to be subject to the benefit. The agreement shall specify the exact percentage of member compensation that shall be paid toward the current service cost of the benefits by members. The member contributions shall be normal contributions over and above normal contributions otherwise required by this part and shall be treated as normal contributions for all purposes of this part. The contributions shall be uniform with respect to all members within each of the following classifications: local miscellaneous members, local policemen, local firefighters, county peace officers, and all local safety members other than local policemen, local firefighters, and county peace officers. The balance of any costs shall be paid by the contracting agency and shall be credited to the employer's account.

(b) This section shall not apply to any optional benefit which is elected by a contracting agency prior to the effective date of this section.

(c) This section shall not apply to any contracting agency nor to the employees of any contracting agency unless and until the agency

elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or, in the case of contracts made after this section takes effect, by express provision in the contract making the contracting agency subject to this section. Contributions provided by this section shall be withheld from member compensation or otherwise collected when the contract amendment becomes effective.

(d) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable and which, in combination, offer the actuary's best estimate of anticipated experience under the system.

(e) The additional employer contributions required under this section shall be computed as a level percentage of member compensation. The additional contribution rate required at the time this section is added to a contract shall not be less than the sum of (1) the actuarial normal cost, plus (2) the additional contribution required to amortize the increase in accrued liability attributable to benefits elected under this section over a period of not more than 30 years from the date this section becomes effective in the public agency's contract.

(f) Nothing in this section shall preclude a contracting agency and its employees from independently agreeing in a memorandum of understanding to share the costs of any optional benefit or when initially entering into a contract, any benefit, in a manner inconsistent with this section. However, any agreement in a memorandum of understanding which is inconsistent with this section shall not be part of the contract between this system and the contracting agency.

SEC. 6. Section 20547 of the Government Code is amended to read:

20547. (a) Effective January 1, 1994, contracting agencies as defined in Section 20010, some or all of whose employees are miscellaneous members included in the federal system, may amend their contracts with the board to provide an alternate level of benefits pursuant to this article. The alternate level of benefits shall be provided to all local miscellaneous members of a contracting agency whose services are also covered under the federal system who first become members of the system on and after the contract amendment effective date and shall be made available by election to eligible members also covered under the federal system who were employees of the contracting agency prior to the effective date of the employer's contract amendment as specified in Section 20547.8.

(b) This article shall not apply to any agency with a memorandum of understanding that precludes any changes in the retirement coverage of the employee bargaining unit subject to that agreement.

SEC. 7. Section 20547.3 of the Government Code is amended to read:

20547.3. (a) The service retirement allowance for a local

miscellaneous member subject to this article shall be calculated in accordance with Section 21251.133.

(b) "Final compensation" for purposes of determining any benefits payable under this part for any local miscellaneous member service subject to this article shall be as defined by Section 20024.01 and shall not be reduced by any fraction or amount due to the inclusion in the federal system.

SEC. 8. Section 20547.4 of the Government Code is amended to read:

20547.4. (a) Participation in the plan afforded by this article shall be made available to any employee who was included in the federal system and who was a member of the Public Employees' Retirement System prior to the effective date of the employer's contract amendment to be subject to this article. The election shall be irrevocable, shall be effective on the first of the pay period following the member's election and shall apply to all future service rendered by the member with that agency. Each contracting agency shall ensure each eligible member receives sufficient information to permit an informed election, is counseled regarding the benefits provided by this article, and receives an election document. The election document shall be filed with the contracting agency, and the contracting agency shall report the member's irrevocable election to the board.

(b) A member subject to this article shall be subject to all other provisions of this part. However, in the event of a conflict, this article shall supersede and prevail over other provisions contained in this part.

SEC. 9. Section 20547.6 of the Government Code is amended to read:

20547.6. (a) The monthly allowances payable to members based on service subject to this article shall be annually adjusted pursuant to Section 21224.

(b) The percentage of the amount of his or her retirement allowance as it was at his or her death payable based on service credited to him or her as a member subject to Section 21263, for a member subject to this article, shall be 25 percent.

SEC. 10. Section 20819 of the Government Code is amended to read:

20819. (a) Notwithstanding any other provision of this part, a school member employed on a part-time basis on and after January 1, 1991, shall, for that period of part-time employment, receive the credit he or she would receive if he or she was employed on a full-time basis and shall have his or her retirement allowance, as well as any other benefits he or she is entitled to under this part, based upon the salary that he or she would have received if employed on a full-time basis if he or she and his or her employer both contribute to the retirement fund the amount that would have been contributed if the member was employed on a full-time basis. Prior to the reduction of a classified employee's workload under this

section, the school employer personnel responsible for the administration of this program shall verify the eligibility of the applicant for the reduced workload program. This section shall be applicable only to school members who are classified employees of school employers or community college districts and who have met the criteria provided in Sections 45139 and 88038 of the Education Code.

(b) The employer shall maintain the necessary records to separately identify each classified employee receiving credit pursuant to this section.

(c) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods which, in combination, offer the actuary's best estimate of anticipated experience under the system.

SEC. 11. Section 22754 of the Government Code is amended to read:

22754. As used in this part the following definitions, unless the context otherwise requires, shall govern the interpretation of terms:

(a) "Board" means the Board of Administration of the Public Employees' Retirement System.

(b) "Employee" means:

(1) Any officer or employee of the State of California or of any agency, department, authority, or instrumentality of the state including the University of California, or any officer or employee who is a local or school member of the Public Employees' Retirement System employed by a contracting agency which has elected to be or otherwise has become subject to this part, or who is a member or retirant of the State Teachers' Retirement System employed by an employer who has elected to become subject to this part, or who is an employee or annuitant of a special district or county subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3) which has elected to become subject to this part, or who is an employee or annuitant of a special district, as defined in subdivision (i), which has elected to become subject to this part, except persons employed on an intermittent, irregular or less than half-time basis, or employees similarly situated, or employees in respect to whom contributions by the state for any type of plan or program offering prepaid hospital and medical care are otherwise authorized by law.

(2) Any officer or employee who participates in the retirement system of a contracting agency as defined in paragraph (2) of subdivision (g) which has elected to become subject to this part, except persons employed less than half-time or who are otherwise determined to be ineligible.

(3) Any annuitant of the Public Employees' Retirement System employed by a contracting agency as defined in subdivision (g) that has elected to become subject to this part who is a person retired under Section 21157.

(c) "Carrier" means a private insurance company holding a valid outstanding certificate of authority from the Insurance Commissioner of the state, a medical society or other medical group, a nonprofit hospital service plan qualifying under Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, or nonprofit membership corporation lawfully operating under Section 9200 or Section 9201 of the Corporations Code, or a health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code, or a health maintenance organization approved under Title XIII of the federal Public Health Services Act, which is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health services under insurance policies or contracts, medical and hospital service agreements, membership contracts, or the like, in consideration of premiums or other periodic charges payable to it.

(d) "Health benefits plan" means any program or entity that provides, arranges, pays for, or reimburses the cost of health benefits.

(e) "Annuitant" means:

(1) Any person who has retired within 120 days of separation from employment and who receives any retirement allowance under any state or University of California retirement system to which the state was a contributing party.

(2) A family member receiving an allowance as the survivor of an annuitant who has retired as provided in paragraph (1), or as the survivor of a deceased employee under Section 21364, 21365.5 or 21382 or similar provisions of any other state retirement system.

(3) Any employee who has retired under the retirement system provided by a contracting agency as defined in paragraph (2) of subdivision (g) and who receives a retirement allowance from that retirement system, or a surviving family member who receives the retirement allowance in place of the deceased.

(4) Any person who was a state member for 30 years or more and who, at the time of retirement, was a local member employed by a contracting agency.

(f) "Family member" means an employee's or annuitant's spouse and any unmarried child (including an adopted child, a stepchild, or recognized natural child who lives with the employee or annuitant in a regular parent-child relationship). The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children.

(g) "Contracting agency" means:

(1) Any contracting agency as defined in Section 20010, any county or special district subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), and any special district, school district, county board of education, personnel commission of a school district or a county superintendent of schools.

(2) Any public body or agency of, or within California not covered by the Public Employees' Retirement System or subject to the

County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), which provides a retirement system for its employees funded wholly or in part by public funds.

(h) "Employer" means the state, any contracting agency employing an employee, and any agency which has elected to become subject to this part pursuant to Section 22856.

(i) "Special district" means a nonprofit, self-governed public agency, within the State of California and comprised solely of public employees, performing a governmental rather than proprietary function.

CHAPTER 637

An act to amend Section 14525 of the Welfare and Institutions Code, relating to aging.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 14525 of the Welfare and Institutions Code is amended to read:

14525. Any older person eligible for benefits under Chapter 7 (commencing with Section 14000) shall be eligible for adult day health care services if that person meets any one of the following criteria:

(a) The person is at the point of discharge from a general acute care hospital or other acute care facility and, except for the availability of an adult day health care program, would be placed in a long-term care institution.

(b) The person is residing in the community, but is in danger of institutionalization, and his or her disabilities and level of functioning are such that without intervention that placement would likely occur.

(c) The person is a resident of a nursing facility or other long-term care facility, but the department determines that institutional placement is unnecessary and the person is an appropriate candidate for adult day health care.

(d) The person is a resident of an intermediate care facility for the developmentally disabled-habilitative, and his or her disabilities and level of functioning are such that without supplemental intervention through adult day health care, placement to a more costly level of care would be likely to occur. The department shall establish an appropriate reimbursement rate for intermediate care facility for the developmentally disabled-habilitative clients to ensure that there is no duplicate payment for services.

CHAPTER 638

An act to amend Section 81007 of, and to add Section 81007.5 to, the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 81007 of the Government Code is amended to read:

81007. When a report or statement or copies thereof required to be filed with any officer under this title have been sent by first-class mail or by any other guaranteed overnight delivery service addressed to the officer, it shall for purposes of any deadline be deemed to have been received by him or her on the date of the deposit in the mail or of receipt by that delivery service. It shall be presumed until the contrary is established that any date stamped by the post office on the envelope or contained on the delivery service receipt containing the report or statement is the date it was deposited in the mail or received by the delivery service. Mail which is not received by the filing officer shall be presumed not to have been sent unless the filer possesses a post office or delivery service receipt establishing the date of deposit and the name and address of the addressee.

SEC. 2. Section 81007.5 is added to the Government Code, to read:

81007.5. Any report or statement or copies thereof required to be filed with any official under Chapter 4 (commencing with Section 84100) or Chapter 7 (commencing with Section 87100) may be faxed by the applicable deadline, provided that the required originals or paper copies are sent by first-class mail or by any other guaranteed overnight delivery service within 24 hours of the applicable deadline and provided that the total number of pages of each report or statement faxed is no more than 30 pages.

SEC. 3. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 639

An act to amend Section 1639.5 of the Health and Safety Code, relating to tissue banks.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 1639.5 of the Health and Safety Code is amended to read:

1639.5. (a) The application and annual renewal fee for a tissue bank license shall be nine hundred fifty dollars ($950). Upon application for renewal of a license issued pursuant to subdivision (a) of Section 1639.3, the amount of the annual renewal fee required shall be determined by the period of time for which renewal is sought, which shall be either a one- or two-year period. The amount due shall be the amount prorated to the length of time the renewal is sought, based on the annual nine hundred fifty dollar ($950) fee.

(b) Notwithstanding subdivision (a), no license fee shall be required for any tissue bank operated by the state or any state agency, or by a district, city, county, or city and county, or any subdivision or agency thereof, or by a "mothers' milk bank," as defined in subdivision (b) of Section 14132.34 of the Welfare and Institutions Code, that has applied for tissue bank licensure prior to January 1, 1995.

CHAPTER 640

An act to add and repeal Section 447.53 of, and to repeal Article 5 (commencing with Section 447.50) of Part 1.95 of Division 1 of, the Health and Safety Code, relating to allied health personnel.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 447.53 is added to the Health and Safety Code, to read:

447.53. (a) The Office of Statewide Health Planning and Development shall submit a report to the Governor and to the Legislature, on or before June 30, 1995, regarding the work completed but not reported by the advisory committee pursuant to this article.

(b) This article shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which

is enacted before January 1, 1996, extends or repeals that date.

CHAPTER 641

An act to amend Section 29550 of, and to add Section 29550.3 to, the Government Code, relating to booking fees.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 29550 of the Government Code is amended to read:

29550. (a) Notwithstanding any other provision of law, a county may impose a fee upon a city, special district, school district, community college district, college, or university for reimbursement of county expenses incurred with respect to the booking or other processing of persons arrested by an employee of that city, special district, school district, community college district, college, or university, where the arrested persons are brought to the county jail for booking or detention. The fee imposed by a county pursuant to this section shall not exceed the actual administrative costs, including applicable overhead costs as permitted by federal Circular A-87 standards, as defined in subdivision (d), incurred in booking or otherwise processing arrested persons. A county may submit an invoice to a city, special district, school district, community college district, college, or university for these expenses incurred by the county on and after July 1, 1990. Counties shall fully disclose the costs allocated as federal Circular A-87 overhead.

(b) (1) Notwithstanding subdivision (a), a city, special district, school district, community college district, college, or university shall not be charged fees for arrests on any bench warrant for failure to appear in court, nor on any arrest warrant issued in connection with a crime not committed within the entity's jurisdiction.

(2) Notwithstanding subdivision (a), a city, special district, school district, community college district, college, or university shall not be charged fees for a person who is ordered by a court to be remanded to the county jail except that a county may charge a fee to recover those direct costs for those functions required to book a person pursuant to subdivision (g) of Section 853.6 of the Penal Code.

(3) Notwithstanding subdivision (a), a city, special district, school district, community college district, college, or university shall not be charged fees for arrests made pursuant to arrest warrants originating outside of its jurisdiction.

(4) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college, college, or university on parole violation arrests or probation-ordered returns to

custody, unless a new charge has been filed for a crime committed in the jurisdiction of the arresting city, district, college, or university.

(5) An agency making a mutual aid request shall pay fees that result from arrests made in response to the mutual aid request except that in the event the Governor declares a state of emergency, no agency shall be charged fees for any arrest made during any riot, disturbance, or event that is subject to the declaration.

(6) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college, college, or university for the arrest of a prisoner who has escaped from a county, state, or federal detention or corrections facility.

(7) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college, college, or university for arrestees held in temporary detention at a court facility for purposes of arraignment when the arrestee has been previously booked at an entity detention facility.

(8) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college, college, or university as the result of an arrest made by its officer assigned to a formal multiagency task force in which the county is a participant. For the purposes of this section, "formal task force" means a task force that has been established by written agreement of the participating agencies.

(9) In those counties where the cities and the county participate in a consolidated booking program and where prior to arraignment an arrestee is transferred from a city detention facility to a county detention facility, the city shall not be charged for those tasks listed in subdivision (d) that are a part of the consolidated booking program which were completed by the city prior to delivering the arrestee to the county detention facility. However, the county may charge the actual administrative costs for those additional tasks listed in subdivision (d) that are performed in order to receive the arrestee into the county detention facility.

(c) Any county whose officer or agent arrests a person is entitled to recover from the arrested person a criminal justice administration fee for administrative costs it incurs in conjunction with the arrest if the person is convicted of any criminal offense related to the arrest, whether or not it is the offense for which the person was originally booked. The fee which the county is entitled to recover pursuant to this subdivision shall not exceed the actual administrative costs, including applicable overhead costs incurred in booking or otherwise processing arrested persons.

(d) When the court has been notified in a manner specified by the court that a criminal justice administration fee is due the agency:

(1) A judgment of conviction may impose an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution may be issued on the order in the same manner as a judgment in a civil action, but shall not be enforceable by contempt.

(2) The court shall, as a condition of probation, order the convicted person, based on his or her ability to pay, to reimburse the county for the criminal justice administration fee, including applicable overhead costs.

(e) As used in this section, "actual administrative costs" include only those costs for functions that are performed in order to receive an arrestee into a county detention facility. Operating expenses of the county jail facility including capitol costs and those costs involved in the housing, feeding, and care of inmates shall not be included in calculating "actual administrative costs." "Actual administrative costs" may include any one or more of the following as related to receiving an arrestee into the county detention facility:

(1) The searching, wristbanding, bathing, clothing, fingerprinting, photographing, and medical and mental screening of an arrestee.

(2) Document preparation, retrieval, updating, filing, and court scheduling related to receiving an arrestee into the detention facility.

(3) Warrant service, processing, and detainer.

(4) Inventory of an arrestee's money and creation of cash accounts.

(5) Inventory and storage of an arrestee's property.

(6) Inventory, laundry, and storage of an arrestee's clothing.

(7) The classification of an arrestee.

(8) The direct costs of automated services utilized in paragraphs (1) to (7), inclusive.

(9) Unit management and supervision of the detention function as related to paragraphs (1) to (8), inclusive.

(f) An administrative screening fee of twenty-five dollars ($25) shall be collected from each person arrested and released on his or her own recognizance upon conviction of any criminal offense related to the arrest other than an infraction. A citation processing fee in the amount of ten dollars ($10) shall be collected from each person cited and released by any peace officer in the field or at a jail facility upon conviction of any criminal offense, other than an infraction, related to the criminal offense cited in the notice to appear. However, the court may determine a lesser fee than otherwise provided in this subdivision upon a showing that the defendant is unable to pay the full amount. All fees collected pursuant to this subdivision shall be transmitted by the county auditor monthly to the Controller for deposit in the General Fund. This subdivision applies only to convictions occurring on or after the effective date of the act adding this subdivision and prior to June 30, 1996.

SEC. 2. Section 29550.3 is added to the Government Code, to read:

29550.3. (a) A city which books or processes persons to a jail administered by it and which does not otherwise incur an administrative fee from the county, may establish and collect an

administrative fee for an arrested person pursuant to the same standards and procedures set forth in Section 29550.1.

(b) Any city whose officer or agent arrests a person is entitled to recover from the arrested person a criminal justice administration fee for administrative costs it incurs in conjunction with the arrest if the person is convicted of any criminal offense related to the arrest, whether or not it is the offense for which the person was originally booked.

(c) Any booking fee imposed pursuant to this section shall be charged to the person booked and not to the arresting entity.

(d) Nothing in this section shall be construed to limit the ability of any city to enter into agreements with other local arresting agencies authorizing the imposition of a criminal justice administration fee by that city upon those local arresting agencies for reimbursement of expenses incurred with respect to the booking or other processing of persons into a jail facility operated by that city.

CHAPTER 642

An act to add Sections 14087.35, 14087.36, 14087.37, 14087.38, and 14087.39 to the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. The Legislature finds and declares all of the following, with respect to Section 14087.36 of the Welfare and Institutions Code, as added by this act:

(a) There exists, on both the state and federal levels, increasing interest in providing comprehensive health care services through managed care health delivery systems.

(b) In the City and County of San Francisco, public and private providers of health care services to the poor, as well as consumers of those services and other interested persons and organizations, have initiated the planning for the development of a unique public-private partnership to provide for the future delivery of health care services in a managed care setting to Medi-Cal eligible persons and other persons residing or working within the city and county.

(c) The unique circumstances in the City and County of San Francisco warrant a special approach for purposes of managed care health delivery systems.

(d) It is necessary to allow the health authority to operate in a manner established in this act in order to promote the competent

and efficient delivery of health care services.

SEC. 2. It is the intent of the Legislature that the members of the governing body of a health authority established in the City and County of San Francisco be appointed to represent and further the interests of the specific health care providers and other economic interests specified in subdivisions (k) and (q) of Section 14087.36 of the Welfare and Institutions Code.

SEC. 3. Section 14087.35 is added to the Welfare and Institutions Code, to read:

14087.35. (a) Because of the unique circumstances that exist in the County of Alameda, it is necessary that the Board of Supervisors of the County of Alameda be given authority to create a health authority separate and apart from the County of Alameda as a means of establishing the local initiative component of the state-mandated two-plan managed care model for the delivery of medical care and services to the Medi-Cal populations. It is further necessary to enable the board of supervisors to expand publicly assisted medical and health care delivery by the newly created health authority to other populations should the board of supervisors elect to do so. Thus, the adoption of a special act is required.

(b) The Board of Supervisors of the County of Alameda may, by ordinance, establish a health authority separate and apart from the County of Alameda, whose governing board shall reflect the diversity of local stakeholders such as provider groups, beneficiary groups and officials of government, and that is appointed by the board of supervisors. Notwithstanding any other provision of this chapter, the governing board may include, but need not be limited to, the following: a member of the board of supervisors, individuals that represent and further the interests of the perspectives of Medi-Cal beneficiaries, and individuals that represent and further the interests of the perspectives of Medi-Cal provider physicians and other health practitioners, hospitals and nonprofit community health centers. Other perspectives may be represented at the discretion of the board of supervisors. The enabling ordinance shall more specifically set forth the membership of the health authority governing board, the qualifications for individual members, the manner of appointment, selection, or removal of governing board members, their terms of office, and all other matters that the board of supervisors deems necessary or convenient for the conduct of the health authority's activities.

(c) The governing board of the health authority and the appropriate state departments, to the extent permitted by federal law, may negotiate and enter into contracts to provide or arrange for health care services for any or all persons who are eligible to receive benefits under the Medi-Cal program and for other targeted populations. The contracts may be on an exclusive or nonexclusive basis, and shall include payment provisions on any basis negotiated between the state and health authority. Prior to the commencement of operations, the health authority shall be licensed as a health care

service plan pursuant to the Knox-Keene Health Care Services Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(d) The board of supervisors may transfer responsibility for administration of county-provided health care services to the health authority for the purpose of service of populations including uninsured and indigent persons subject to the provisions of any ordinances or resolutions passed by the board of supervisors. The transfer of administrative responsibility for those health care services shall not relieve the county of its responsibility for indigent care pursuant to Section 17000. In addition, the services and programs of the health authority may include, but are not limited to, individuals covered under Title XVIII of the Social Security Act, contained in Subchapter 18 (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, and individuals and groups employed by public agencies and private businesses.

(e) As a legal entity separate and apart from the County of Alameda, the health authority shall file the statement required by Section 53051 of the Government Code, and shall have the power to acquire, possess, and dispose of real or personal property as may be necessary for the performance of its functions, to sue or be sued, and to employ personnel and contract for services required to meet its obligations.

(f) (1) The health authority shall be deemed to be a legal entity separate and apart from the County of Alameda, and shall not be considered to be an agency, division, department, or intrumentality of the County of Alameda.

(2) The health authority shall not be governed by, nor be subject to, the Charter of the County of Alameda and shall not be subject to county policies or operational rules, including, but not limited to, those relating to personnel and procurement.

(g) The health authority shall be considered a public entity, and employees of the health authority shall be considered public employees, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. Members of the governing board of the health authority shall not be vicariously liable for injuries caused by the act or omission of the health authority or advisory body to the extent that protection applies to members of governing boards of local public entities generally under Section 820.9 of the Government Code.

(h) Upon the enactment of the ordinance, all rights, powers, duties, privileges, and immunities vested in the County of Alameda with respect to the subject matter of this section shall be vested in the health authority. Any obligation of the health authority, statutory, contractual, or otherwise, shall be the obligation solely of the health authority and shall not be the obligation of the County of Alameda or the state.

(i) The health authority shall not be a "person" subject to suit

under the Cartwright Act, Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code.

(j) The health authority created pursuant to this section may borrow from the county and the county may lend the health authority funds, or issue revenue anticipation notes to obtain those funds necessary to commence operations.

(k) The health authority or the county, or both, may engage in marketing, advertising, and promotion of the medical and health care services made available to the target populations by the health authority.

(*l*) Provisions for the termination of the health authority's activities with respect to the delivery of services to Medi-Cal populations shall be contained in the appropriate contracts executed by and between the health authority and the appropriate state departments.

(m) If the board of supervisors expands publicly assisted medical and health care delivery by the health authority to other populations, and the board of supervisors subsequently determines that the health authority may no longer function for the purpose of the expanded delivery, at the time as the health authority's existing obligations with respect thereto have been satisfied, the board of supervisors may, by ordinance, terminate the expanded delivery activities of the health authority.

(n) All assets of the health authority that are related to Medi-Cal services shall be disposed of pursuant to the Medi-Cal related contract entered into between the state and the health authority.

(o) All liabilities or obligations of the health authority with respect to its activities pursuant to the state-mandated two-plan managed care model for the delivery of medical care and services to the Medi-Cal population shall be the liabilities or obligations of the health authority, and shall not become the liabilities or obligations of the county upon the termination of the health authority or at any other time. Any liabilities or obligations of the health authority with respect to the liquidation or disposition of the health authority's assets upon termination of the health authority shall not become the liabilities or obligations of the county, except that the county shall manage any remaining Medi-Cal related assets of the health authority until superseded by a plan approved by the department.

(p) The Legislature finds and declares that Section 14105 provides that the Director of Health Services prescribe the policies for the administration of Medi-Cal managed care contracts. The state-mandated two-plan managed care model distributed by the director sets forth that policy, expressly providing that local stakeholders, including government officials, providers and community-based organizations, are afforded maximum flexibility and control in designing a delivery system that reflects the needs and priorities of the community that it serves. The mandated model requires that the governing board of the local initiative reflect an effort to include representation of the perspectives of provider and

beneficiary groups. To effectuate this policy, all of the following shall apply:

(1) Notwithstanding any provision of law to the contrary, a member of the governing board of the health authority shall be deemed not to be interested in a contract entered into by the health authority within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if all the following apply:

(A) The member was appointed to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations.

(B) The contract authorizes the member or the organization the member represents to provide services to beneficiaries or administrative services under the health authority's programs.

(C) The contract contains substantially the same terms and conditions as contracts entered into with other individuals or organizations that the member was appointed to represent.

(D) The member does not influence or attempt to influence the health authority or another member of the health authority to enter into the contract in which the member is interested.

(E) The member discloses the interest to the health authority and abstains from voting on the contract.

(F) The health authority notes the member's disclosure and abstention in its official records and authorizes the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

(2) Notwithstanding Article 4.7 (commencing with Section 1125) of Chapter 1 of Division 4 of Title 1 of the Government Code related to incompatible activities, no member of the governing board, no officer, and no member of the alliance staff shall be considered to be engaged in activities inconsistent and incompatible with his or her duties as a governing board member, officer, or staff person solely as a result of employment or affiliation with the county, private hospital, clinic, pharmacy, other provider group, or employee organization or citizen's group.

(q) (1) The health authority may use a computerized management information system in connection with the administration of its health delivery system, including the administration of the state-mandated two-plan Medi-Cal managed care model.

(2) Information maintained in the management information system that pertains to persons who are Medi-Cal applicants or recipients shall be confidential pursuant to Section 14100.2, and shall not be open to examination other than for purposes directly connected with the administration of the Medi-Cal program, including, but not limited to, those set forth in subdivision (c) of Section 14100.2. This safeguarded information includes, but is not limited to, names and addresses, medical services provided, social and economic conditions or circumstances, health authority

evaluation of personal information, and medical data, including diagnosis and past history of disease or disability.

(3) Information maintained in the management information system that pertains to peer review-related activities shall be confidential and subject to the full protections of the law with respect to the confidentiality of activities related to peer review generally.

(r) The records of the health authority, whether paper records, records maintained in the management information system, or records in any other form, that relate to rate or payment, including records relating to rate or payment determination, allocation or distribution methodologies, formulae or calculations, and records of the health authority that relate to contract negotiations with providers of health care for alternative rates, shall not be subject to disclosure pursuant to the California Public Records Act (Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

(s) (1) Notwithstanding any other provision of law, the governing board may order that a meeting held solely for the purpose of discussion or taking action on health authority trade secrets, as defined in subdivision (c) of Section 32106 of the Health and Safety Code, shall be held in closed session. The requirements of making a public report of actions taken in closed session, and the vote or abstention of every member present, may be limited to a brief general description devoid of the information constituting the trade secret.

(2) The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to paragraph (1) that are provided to persons who have made the timely or standing request.

(3) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(t) Open sessions of the health authority shall constitute official proceedings authorized by law within the meaning of Section 47 of the Civil Code, and those privileges set forth in that section with respect to official proceedings shall apply to open sessions of the health authority.

(u) The health authority shall be considered a public agency for purposes of eligibility with respect to grants and other funding and loan guarantee programs. Contributions to the health authority shall be tax deductible to the extent permitted by state and federal law.

(v) Contracts by and between the health authority and the state, and contracts by and between the health authority and providers of health care, goods or services may be let on a nonbid basis, and shall

be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(w) (1) Provisions of the Evidence Code, the Government Code, including the Public Records Act (Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), the Civil Code, the Business and Professions Code, and other applicable law pertaining to the confidentiality of peer review activities of peer review bodies shall apply to the peer review activities of the health authority. Peer review proceedings shall constitute an official proceeding authorized by law within the meaning of Section 47 of the Civil Code, and those privileges set forth in that section with respect to official proceedings shall apply to peer review proceedings of the health authority. If the health authority is required by law or contractual obligation to submit to the state or federal government peer review information or information relevant to the credentialing of a participating provider, that submission shall not constitute a waiver of confidentiality. The laws pertaining to the confidentiality of peer review activities shall be together construed as extending, to the extent permitted by law, the maximum degree of protection of confidentiality.

(2) Notwithstanding any other provision of law, Section 1461 of the Health and Safety Code shall apply to hearings on the reports of hospital medical audit or quality assurance committees as they relate to network providers or applicants.

(x) The health authority shall carry general liability insurance to the extent sufficient to cover its activities.

(y) The establishment of a health authority under Article 2.8 (commencing with Section 14087.5) shall be valid as if established pursuant to this section and this section shall apply to that health authority.

SEC. 4. Section 14087.36 is added to the Welfare and Institutions Code, to read:

14087.36. (a) The following definitions shall apply for purposes of this section:

(1) "County" means the City and County of San Francisco.

(2) "Board" means the Board of Supervisors of the City and County of San Francisco.

(3) "Department" means the State Department of Health Services.

(4) "Governing body" means the governing body of the health authority.

(5) "Health authority" means the separate public agency established by the board of supervisors to operate a health care system in the county and to engage in the other activities authorized by this section.

(b) The Legislature finds and declares that it is necessary that a health authority be established in the county to arrange for the provision of health care services in order to meet the problems of the delivery of publicly assisted medical care in the county, to enter into

a contract with the department under Article 2.97 (commencing with Section 14093), or to contract with a health care service plan on terms and conditions acceptable to the department, and to demonstrate ways of promoting quality care and cost efficiency.

(c) The county may, by resolution or ordinance, establish a health authority to act as and be the local initiative component of the Medi-Cal state plan pursuant to regulations adopted by the department. If the board elects to establish a health authority, all rights, powers, duties, privileges, and immunities vested in a county under Article 2.8 (commencing with Section 14087.5) and Article 2.97 (commencing with Section 14093) shall be vested in the health authority. The health authority shall have all power necessary and appropriate to operate programs involving health care services, including, but not limited to, the power to acquire, possess, and dispose of real or personal property, to employ personnel and contract for services required to meet its obligations, to sue or be sued, and to take all actions and engage in all public and private business activities, subject to any applicable licensure, as permitted a health care service plan pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(d) (1) (A) The health authority shall be considered a public entity separate and distinct from the county and shall file the statement required by Section 53051 of the Government Code. The health authority shall have primary responsibility to provide the defense and indemnification required under Division 3.6 (commencing with Section 810) of Title 1 of the Government Code for employees of the health authority who are employees of the county. The health authority shall provide insurance under terms and conditions required by the county in order to satisfy its obligations under this section.

(B) For purposes of this paragraph, "employee" shall have the same meaning as set forth in Section 810.2 of the Government Code.

(2) The health authority shall not be considered to be an agency, division, department, or instrumentality of the county and shall not be subject to the personnel, procurement, or other operational rules of the county.

(3) Notwithstanding any other provision of law, any obligations of the health authority, statutory, contractual, or otherwise, shall be the obligations solely of the health authority and shall not be the obligations of the county, unless expressly provided for in a contract between the authority and the county, nor of the state.

(4) Except as agreed to by contract with the county, no liability of the health authority shall become an obligation of the county upon either termination of the health authority or the liquidation or disposition of the health authority's remaining assets.

(e) (1) To the full extent permitted by federal law, the department and the health authority may enter into contracts to provide or arrange for health care services for any or all persons who are eligible to receive benefits under the Medi-Cal program. The

contracts may be on an exclusive or nonexclusive basis, and shall include payment provisions on any basis negotiated between the department and the health authority. The health authority may also enter into contracts for the provision of health care services to individuals including, but not limited to, those covered under Subchapter 18 (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, individuals employed by public agencies and private businesses, and uninsured or indigent individuals.

(2) Notwithstanding paragraph (1), or subdivision (f), the health authority may not operate health plans or programs for individuals covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, or for private businesses, until the health authority is in full compliance with all of the requirements of the Knox-Keene Health Care Service Plan Act of 1975 under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, including tangible net equity requirements applicable to a licensed health care service plan. This limitation shall not preclude the health authority from enrolling persons pursuant to the county's obligations under Section 17000, or from enrolling county employees.

(f) The board of supervisors may transfer responsibility for administration of county-provided health care services to the health authority for the purpose of service of populations including uninsured and indigent persons, subject to the provisions of any ordinances or resolutions passed by the county board of supervisors. The transfer of administrative responsibility for those health care services shall not relieve the county of its responsibility for indigent care pursuant to Section 17000. The health authority may also enter into contracts for the provision of health care services to individuals including, but not limited to, those covered under Subchapter 18 (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, and individuals employed by public agencies and private businesses.

(g) Upon creation, the health authority may borrow from the county and the county may lend the authority funds, or issue revenue anticipation notes to obtain those funds necessary to commence operations or perform the activities of the health authority. Notwithstanding any other provision of law, both the county and the health authority shall be eligible to receive funding under subdivision (p) of Section 14163.

(h) The county may terminate the health authority, but only by an ordinance approved by a two-thirds affirmative vote of the full board.

(i) Prior to the termination of the health authority, the county shall notify the department of its intent to terminate the health authority. The department shall conduct an audit of the health authority's records within 30 days of notification to determine the liabilities and assets of the health authority. The department shall

report its findings to the county and to the Department of Corporations within 10 days of completion of the audit. The county shall prepare a plan to liquidate or otherwise dispose of the assets of the health authority and to pay the liabilities of the health authority to the extent of the health authority's assets, and present the plan to the department and the Department of Corporations within 30 days upon receipt of these findings.

(j) Any assets of the health authority derived from the contract entered into between the state and the authority pursuant to Article 2.97 (commencing with Section 14093), after payment of the liabilities of the health authority, shall be disposed of pursuant to the contract.

(k) (1) The governing body shall consist of 18 voting members, 14 of whom shall be appointed by resolution or ordinance of the board as follows:

(A) One member shall be a member of the board or any other person designated by the board.

(B) One member shall be a person who is employed in the senior management of a hospital not operated by the county or the University of California and who is nominated by the San Francisco Section of the Westbay Hospital Conference or any successor organization, or if no such successor organization, a person who shall be nominated by the Hospital Council of Northern and Central California.

(C) Two members, one of whom shall be a person employed in the senior management of San Francisco General Hospital and one of whom shall be a person employed in the senior management of St. Luke's Hospital (San Francisco). If San Francisco General Hospital or St. Luke's Hospital, at the end of the term of the person appointed from its senior management, is not designated as a disproportionate share hospital, and if the governing body, after providing an opportunity for comment by the Westbay Hospital Conference, or any successor organization, determines that the hospital no longer serves an equivalent patient population, the governing body may, by a two-thirds vote of the full governing body, select an alternative hospital to nominate a person employed in its senior management to serve on the governing body. Alternatively, the governing body may approve a reduction in the number of positions on the governing body as set forth in subdivision (p).

(D) Two members shall be employees in the senior management of either private nonprofit community clinics or a community clinic consortium, nominated by the San Francisco Community Clinic Consortium, or any successor organization.

(E) Two members shall be physicians, nominated by the San Francisco Medical Society, or any successor organization.

(F) One member shall be nominated by the San Francisco Labor Council, or any successor organization.

(G) Two members shall be persons nominated by the beneficiary committee of the health authority, at least one of whom shall, at the

time of appointment and during the person's term, be a Medi-Cal beneficiary.

(H) Two members shall be persons knowledgeable in matters relating to either traditional safety net providers, health care organizations, the Medi-Cal program, or the activities of the health authority, nominated by the program committee of the health authority.

(I) One member shall be a person nominated by the San Francisco Pharmacy Leadership Group, or any successor organization.

(2) One member, selected to fulfill the appointments specified in subparagraph (A), (G), or (H) shall, in addition to representing his or her specified organization or employer, represent the discipline of nursing, and shall possess or be qualified to possess a registered nursing license.

(3) The initial members appointed by the board under the subdivision shall be, to the extent those individuals meet the qualifications set forth in this subdivision and are willing to serve, those persons who are members of the steering committee created by the county to develop the local initiative component of the Medi-Cal state plan in San Francisco. Following the initial staggering of terms, each of those members shall be appointed to a term of three years, except the member appointed pursuant to subparagraph (A) of paragraph (1), who shall serve at the pleasure of the board. At the first meeting of the governing body, the members appointed pursuant to this subdivision shall draw lots to determine seven members whose initial terms shall be for two years. Each member shall remain in office at the conclusion of that member's term until a successor member has been nominated and appointed.

(*l*) In addition to the requirements of subdivision (k), one member of the governing body shall be appointed by the Mayor of the City of San Francisco to serve at the pleasure of the mayor, one member shall be the county's director of public health or designee, who shall serve at the pleasure of that director, one member shall be the Chancellor of the University of California at San Francisco or his or her designee, who shall serve at the pleasure of the chancellor, and one member shall be the county director of mental health or his or her designee, who shall serve at the pleasure of that director.

(m) There shall be one nonvoting member of the governing body who shall be appointed by, and serve at the pleasure of, the health commission of the county.

(n) Each person appointed to the governing body shall, throughout the member's term, either be a resident of the county or be employed within the geographic boundaries of the county.

(o) (1) The composition of the governing body and nomination process for appointment of its members shall be subject to alteration upon a two-thirds vote of the full membership of the governing body. This action shall be concurred in by a resolution or ordinance of the county.

(2) Notwithstanding paragraph (1), no alteration described in that paragraph shall cause the removal of a member prior to the expiration of that member's term.

(p) A majority of the members of the governing body shall constitute a quorum for the transaction of business, and all official acts of the governing body shall require the affirmative vote of a majority of the members present and voting. However, no official shall be approved with less than the affirmative vote of six members of the governing body, unless the number of members prohibited from voting because of conflicts of interest precludes adequate participation in the vote. The governing body may, by a two-thirds vote adopt, amend, or repeal rules and procedures for the governing body. Those rules and procedures may require that certain decisions be made by a vote that is greater than a majority vote.

(q) For purposes of Section 87103 of the Government Code, members appointed pursuant to subparagraphs (B) to (E), inclusive, of paragraph (1) of subdivision (k) represent, and are appointed to represent, respectively, the hospitals, private nonprofit community clinics, and physicians that contract with the health authority, or the health care service plan with which the health authority contracts, to provide health care services to the enrollees of the health authority or the health care service plan. Members appointed pursuant to subparagraphs (F) and (G) of paragraph (1) of subdivision (k) represent and are appointed to represent, respectively, the health care workers and enrollees served by the health authority or its contracted health care service plan, and traditional safety net and ancillary providers and other organizations concerned with the activities of the health authority.

(r) A member of the governing body may be removed from office by the board by resolution or ordinance, only upon the recommendation of the health authority, and for the following reasons:

(1) Failure to retain the qualifications for appointment specified in subdivisions (k) and (n).

(2) Death or a disability that substantially interferes with the member's ability to carry out the duties of office.

(3) Conviction of any felony or a crime involving corruption.

(4) Failure of the member to discharge legal obligations as a member of a public agency.

(5) Substantial failure to perform the duties of office, including, but not limited to, unreasonable absence from meetings. The failure to attend three meetings in a row of the governing body, or a majority of the meetings in the most recent calendar year, may be deemed to be unreasonable absence.

(s) Any vacancy on the governing body, however created, shall be filled for the unexpired term by the board by resolution or ordinance. Each vacancy shall be filled by an individual having the qualifications of his or her predecessor, nominated as set forth in subdivision (k).

(t) The chair of the authority shall be selected by, and serve at the

pleasure of, the governing body.

(u) The health authority shall establish all of the following:

(1) A beneficiary committee to advise the health authority on issues of concern to the recipients of services.

(2) A program committee to advise the health authority on matters relating to traditional safety net providers, ancillary providers, and other organizations concerned with the activities of the health authority.

(3) Any other committees determined to be advisable by the health authority.

(v) (1) Notwithstanding any provision of state or local law, including, but not limited to, the county charter, a member of the health authority shall not be deemed to be interested in a contract entered into by the authority within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if all of the following apply:

(A) The member does not influence or attempt to influence the health authority or another member of the health authority to enter into the contract in which the member is interested.

(B) The member discloses the interest to the health authority and abstains from voting on the contract.

(C) The health authority notes the member's disclosure and abstention in its official records and authorizes the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

(D) The member has an interest in or was appointed to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations.

(E) The contract authorizes the member or the organization the member has an interest in or represents to provide services to beneficiaries under the authority's program or administrative services to the authority.

(2) In addition, no person serving as a member of the governing body shall, by virtue of that membership, be deemed to be engaged in activities that are inconsistent, incompatible, or in conflict with their duties as an officer or employee of the county or the University of California, or as an officer or an employee of any private hospital, clinic, or other health care organization. The membership shall not be deemed to be in violation of Section 1126 of the Government Code.

(w) Notwithstanding any other provision of law, those records of the health authority and of the health county that reveal the authority's rates of payment for health care services or the health authority's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services for rates of payment, or the health authority's peer review proceedings shall not be required to be disclosed pursuant to the California Public Records Act, Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, or any similar

local law requiring the disclosure of public records. However, three years after a contract or amendment to a contract is fully executed, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(x) Notwithstanding any other provision of law, the health authority may meet in closed session to consider and take action on peer review proceedings and on matters pertaining to contracts and to contract negotiations by the health authority's staff with providers of health care services concerning all matters relating to rates of payment. However, a decision as to whether to enter into, amend the services provisions of, or terminate, other than for reasons based upon peer review, a contract with a provider of health care services, shall be made in open session.

(y) The health authority shall be deemed to be a public agency for purposes of all grant programs and other funding and loan guarantee programs.

(z) Contracts under this article between the State Department of Health Services and the health authority shall be on a nonbid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(aa) (1) The county controller or his or her designee, at intervals the county controller deems appropriate, shall conduct a review of the fiscal condition of the health authority, shall report the findings to the health authority and the board, and shall provide a copy of the findings to any public agency upon request.

(2) Upon the written request of the county controller, the health authority shall provide full access to the county controller all health authority records and documents as necessary to allow the county controller or designee to perform the activities authorized by this subdivision.

(bb) A Medi-Cal recipient receiving services through the health authority shall be deemed to be a subscriber or enrollee for purposes of Section 1379 of the Health and Safety Code.

SEC. 5. Section 14087.37 is added to the Welfare and Institutions Code, to read:

14087.37. Commencing on the date that a health authority established pursuant to Section 14087.35 or 14087.36 first receives Medi-Cal capitated payments for the provision of health care services to Medi-Cal beneficiaries and until the time that the health authority is in compliance with all the requirements regarding tangible net equity applicable to a health care service plan licensed under the Knox-Keene Health Care Service Plan Act of 1975, the following provisions shall apply:

(a) The health authority may select and design its automated management information system, but the department, in cooperation with the health authority, prior to making capitated payments shall test the system to ensure that the system is capable of producing detailed, accurate, and timely financial information on the financial condition of the health authority and any other

information generally required by the department in its contracts with health care service plans.

(b) In addition to the reports required by the Department of Corporations under the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Commissioner of Corporations promulgated thereunder, the health authority shall provide on a monthly basis to the department, the Department of Corporations, and the members of the health authority, a copy of the automated report described in subdivision (a) and a projection of assets and liabilities, including those that have been incurred but not reported, with an explanation of material increases or decreases in current or projected assets or liabilities. The explanation of increases and decreases in assets or liabilities shall be provided, upon request, to a hospital, independent physicians' practice association, or community clinic, that has contracted with the health authority to provide health care services.

(c) In addition to the reporting and notification obligations the health authority has under the Knox-Keene Health Care Service Plan Act of 1975, the chief executive officer or director of the health authority shall immediately notify the department, the Department of Corporations, and the members of the health authority in writing of any fact or facts that, in the chief executive officers' or director's reasonable and prudent judgment, is likely to result in the health authority being unable to meet its financial obligations to health care providers or to other parties. Written notice shall describe the fact or facts, the anticipated fiscal consequences, and the actions that will be taken to address the anticipated consequences.

(d) The Department of Corporations shall not waive or vary, nor shall the department request the Department of Corporations to waive or vary, the tangible net equity requirements for a health authority under the Knox-Keene Health Care Service Plan Act of 1975 after three years from the date of commencement of capitated payments to the health authority. Until the time the health authority is in compliance with all of the tangible net equity requirements under the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Commissioner of Corporations promulgated thereunder, the health authority shall develop a stop-loss program appropriate to the risks of the health authority. The program shall be satisfactory to both the department and the Department of Corporations.

(e) In the event that the health authority votes to file a petition of bankruptcy, or the board of supervisors notifies the department of its intent to terminate the health authority, the department shall immediately convert the health authority's Medi-Cal beneficiaries to either of the following:

(1) To other managed care contractors when available, provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees.

(2) To the extent that other managed care contractors are

unavailable or the department determines that the action is otherwise in the best interest of any particular beneficiary, to a fee-for-service reimbursement system pending the availability of managed care contractors, provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees, or if the department determines that providing care to any particular beneficiary pursuant to a fee-for-service reimbursement system is no longer necessary to protect the continuity of care or other interests of the beneficiary. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be converted to a fee-for-service reimbursement system or managed care contractor may make a choice to be enrolled in another managed care system, if one is available, in full compliance with the federal freedom-of-choice requirements.

(f) The health authority shall submit to a review of financial records when the department determines, based on data reported by the health authority or otherwise, that the health authority will not be able to meet its financial obligations to health care providers contracting with the health authority. Where the review of financial records determines that the health authority will not be able to meet its financial obligations to contracting health care providers for the provision of health care services, the director shall immediately terminate the contract between the health authority and the state, and immediately convert the health authority Medi-Cal beneficiaries in accordance with subdivision (e) in order to ensure uninterrupted provision of health care services to the beneficiaries and to minimize financial disruption to providers. The action of the director shall be the final administrative determination. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be converted under subdivision (e) may make a choice to be enrolled in another managed care plan, if one is available, in full compliance with federal freedom-of-choice requirements.

(g) It is the intent of the Legislature that the department shall implement Medi-Cal capitated enrollments in a manner that ensures that appropriate levels of health care services will be provided to Medi-Cal beneficiaries and that appropriate levels of administrative services will be furnished to health care providers. The contract between the department and the health authority shall authorize and permit the department to administer the number of covered Medi-Cal enrollments in such a manner that the health authority's provider network and administrative structure are able to provide appropriate and timely services to beneficiaries and to participating providers.

(h) In the event a health authority is terminated, files for bankruptcy, or otherwise no longer functions for the purpose for which it was established, the county shall, with respect to

compensation for provision of health care services to beneficiaries, occupy no greater or lesser status than any other health care provider in the disbursement of assets of the health authority.

(i) Nothing in this subdivision shall be construed to impair or diminish the authority of the Commissioner of Corporations under the Knox-Keene Health Care Service Plan Act of 1975, nor shall anything in the section be construed to reduce or otherwise limit the obligation of a health authority licensed as a health care service plan to comply with the requirements of the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Commissioner of Corporations promulgated thereunder.

SEC. 6. Section 14087.38 is added to the Welfare and Institutions Code, to read:

14087.38. (a) (1) In counties selected by the director with the concurrence of the county, a special county health authority may be established in order to meet the problems of delivery of publicly assisted medical care in each county, and to demonstrate ways of promoting quality care and cost efficiency. Nothing in this section shall be construed to preclude the department from expanding Medi-Cal managed care in ways other than those provided for in this section, including, but not limited to, the establishment of a public benefit corporation as set forth in Section 5110 of the Corporations Code.

(2) For purposes of this section "health authority" means an entity separate from the county that meets the requirements of state and federal law and the quality, cost, and access criteria established by the department.

(b) The board of supervisors of a county described in subdivision (a) may, by ordinance, establish a health authority to negotiate and enter into contracts authorized by Section 14087.3, and to arrange for the provision of health care services provided pursuant to this chapter. If the board of supervisors elects to enact this ordinance, all rights, powers, duties, privileges, and immunities vested in a county contracting with the department under this article shall be vested in the health authority. The health authority may also enter into contracts for the provision of health care services to individuals including, but not limited to, those covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, those entitled to coverage under other publicly supported programs, those employed by public agencies or private businesses, and uninsured or indigent individuals.

(c) The enabling ordinance shall specify the membership of the governing board of the health authority, the qualifications for individual members, the manner of appointment, selection, or removal of board members, and how long they shall serve, and any other matters the board of supervisors deems necessary or convenient for the conduct of the health authority's activities. Members of the governing board shall be appointed by the board of supervisors to represent the interests of the county, the general

public, beneficiaries, physicians, hospitals, clinics, and other nonphysician health care providers. The health authority so established shall be considered an entity separate from the county, shall file a statement required by Section 53051 of the Government Code, and shall have the power to acquire, possess, and dispose of real or personal property, as necessary for the performance of its functions, to employ personnel and contract for services required to meet its obligations, and to sue or be sued. Any obligations of a health authority, statutory, contractual, or otherwise, shall be obligations solely of the health authority and shall not be the obligations of the county or of the state.

(d) Upon creation, the health authority may borrow from the county, and the county may lend the health authority funds or issue revenue anticipation notes to obtain those funds necessary to commence operations.

(e) Notwithstanding any other provision of law, both the county and the health authority shall be eligible to receive funding under subdivision (p) of Section 14163, and the health authority shall be considered to have satisfied the requirements of that subdivision.

(f) The health authority shall be deemed to be a public agency that is a unit of local government for purposes of all grant programs and other funding and loan guarantee programs.

(g) It is the intent of the Legislature that if a health authority is formed pursuant to this section, the county shall, with respect to its medical facilities and programs, occupy no greater or lesser status than any other health care provider in negotiating with the health authority for contracts to provide health care services. Nothing in this subdivision shall be construed to interfere with or limit the health authority in giving preference in negotiating to disproportionate share hospitals or other providers of health care to medically indigent or uninsured individuals.

(h) Notwithstanding any other provisions of law, a member of the governing board of the health authority shall not be deemed to be interested in a contract entered into by the health authority within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if all the following apply:

(1) The member was appointed to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations, or beneficiaries.

(2) The contract authorizes the member or the organization the member represents to provide services to beneficiaries under the health authority's programs.

(3) The contract contains substantially the same terms and conditions as contracts entered into with other individuals or organizations that the member was appointed to represent.

(4) The member does not influence or attempt to influence the health authority or another member of the health authority to enter into the contract in which the member is interested.

(5) The member discloses the interest to the health authority and abstains from voting on the contract.

(6) The governing board notes the member's disclosure and abstention in its official records and authorizes the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

(i) All claims for money or damages against the health authority shall be governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided by other statutes or regulations that expressly apply to the health authority.

(j) The health authority, members of its governing board, and its employees, are protected by the immunities applicable to public entities and public employees governed by Part 1 (commencing with Section 810) and Part 2 (commencing with Section 814) of Division 3.6 of Title 1 of the Government Code, except as provided by other statutes or regulations that apply expressly to the health authority.

(k) Notwithstanding any other provision of law, except as otherwise provided in this section, a county shall not be liable for any act or omission of the health authority.

(*l*) The transfer of responsibility for health care services to the health authority shall not relieve the county of its responsibility for indigent care pursuant to Section 17000.

(m) Notwithstanding any other provision of law, the governing board of the health authority may meet in closed session to consider and take action on matters pertaining to contracts, and to contract negotiations by health authority staff with providers of health care services concerning all matters related to rates of payment.

(n) Notwithstanding Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, and Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, the Government Code, or any other provision of law, any peer review body, as defined in paragraph (1) of subdivision (a) of Section 805 of the Business and Professions Code, formed pursuant to the powers granted to the health authority authorized by this section, may, at its discretion and without notice to the public, meet in closed session, so long as the purpose of the meeting is the peer review body's discharge of its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners, pursuant to the powers granted to the health authority. Any such peer review body and its members shall receive, to the fullest extent, all immunities, privileges, and protections available to those peer review bodies, their individual members, and persons or entities assisting in the peer review process, including those afforded by Section 1157 of the Evidence Code and Section 1370 of the Health and Safety Code.

(o) Notwithstanding any other provision of law, those records of the health authority and of the county that reveal the health authority's rates of payment for health care services or the health

authority's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services for rates of payment, shall not be required to be disclosed pursuant to the California Public Records Act, Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, or any similar local law requiring the disclosure of public records. However, three years after a contract or amendment to a contract is fully executed, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(p) Notwithstanding the California Public Records Act, or Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, and Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, the Government Code, or any other provision of state or local law requiring disclosure of public records, those records of a peer review body, as defined in paragraph (1) of subdivision (a) of Section 805 of the Business and Professions Code, formed pursuant to the powers granted to the health authority authorized by this section, shall not be required to be disclosed. The records and proceedings of any such peer review body and its individual members shall receive, to the fullest extent, all immunities, privileges, and protections available to those records and proceedings, including those afforded by Section 1157 of the Evidence Code and Section 1370 of the Health and Safety Code.

(q) Except as expressly provided by other provisions of this section, all exemptions and exclusions from disclosure as public records pursuant to the California Public Records Act, including, but not limited to, those pertaining to trade secrets and information withheld in the public interest, shall be fully applicable for all state agencies and local agencies with respect to all writings that the health authority is required to prepare, produce, or submit pursuant to this section.

(r) (1) Any health authority formed pursuant to this section shall obtain licensure as a health care service plan under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code).

(2) Notwithstanding subdivisions (b) and (s), a health authority may not operate health plans or programs for individuals covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, or for private businesses, until the health authority is in full compliance with all of the requirements of the Knox-Keene Health Care Service Plan Act of 1975, including tangible net equity requirements applicable to a licensed health care service plan.

(s) Commencing on the date that the health authority first receives Medi-Cal capitated payments for the provision of health care services to Medi-Cal beneficiaries and until the time that the health authority is in compliance with all the requirements regarding tangible net equity applicable to a health care service plan

licensed under the Knox-Keene Health Care Service Plan Act of 1975, the following provisions shall apply:

(1) The health authority may select and design its automated management information system, but the department, in cooperation with the health authority, prior to making capitated payments shall test the system to ensure that the system is capable of producing detailed, accurate, and timely financial information on the financial condition of the health authority and any other information generally required by the department in its contracts with health care service plans.

(2) In addition to the reports required by the Department of Corporations under the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Commissioner of Corporations promulgated thereunder, the health authority shall provide on a monthly basis to the department, the Department of Corporations, and the members of the health authority, a copy of the automated report described in paragraph (1) and a projection of assets and liabilities, including those that have been incurred but not reported, with an explanation of material increases or decreases in current or projected assets or liabilities. The explanation of increases and decreases in assets or liabilities shall be provided, upon request, to a hospital, independent physicians' practice association, or community clinic, that has contracted with the health authority to provide health care services.

(3) In addition to the reporting and notification obligations the health authority has under the Knox-Keene Health Care Service Plan Act of 1975, the chief executive officer or director of the health authority shall immediately notify the department, the Department of Corporations, and the members of the governing board of the health authority in writing of any fact or facts that, in the chief executive officer's or director's reasonable and prudent judgment, is likely to result in the health authority being unable to meet its financial obligations to health care providers or to other parties. Written notice shall describe the fact or facts, the anticipated fiscal consequences, and the actions that will be taken to address the anticipated consequences.

(4) The Department of Corporations shall not waive or vary, nor shall the department request the Department of Corporations to waive or vary, the tangible net equity requirements for a health authority under the Knox-Keene Health Care Service Plan Act of 1975 after three years from the date of commencement of capitated payments to the health authority. Until the time the health authority is in compliance with all of the tangible net equity requirements under the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Commissioner of Corporations promulgated thereunder, the health authority shall develop a stop-loss program appropriate to the risks of the health authority. The program shall be satisfactory to both the department and the Department of Corporations.

(5) In the event that the health authority votes to file a petition

of bankruptcy, or the board of supervisors notifies the department of its intent to terminate the health authority, the department shall immediately convert the authority's Medi-Cal beneficiaries to either of the following:

(A) To other managed care contractors when available, provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees.

(B) To the extent that other managed care contractors are unavailable or the department determines that the action is otherwise in the best interest of any particular beneficiary, to a fee-for-service reimbursement system pending the availability of managed care contractors, provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees, or if the department determines that providing care to any particular beneficiary pursuant to a fee-for-service reimbursement system is no longer necessary to protect the continuity of care or other interests of the beneficiary. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be converted to a fee-for-service reimbursement system or managed care contractor may make a choice to be enrolled in another managed care system, if one is available, in full compliance with the federal freedom-of-choice requirements.

(6) The health authority shall submit to a review of financial records when the department determines, based on data reported by the health authority or otherwise, that the health authority will not be able to meet its financial obligations to health care providers contracting with the health authority. Where the review of financial records determines that the health authority will not be able to meet its financial obligations to contracting health care providers for the provision of health care services, the director shall immediately terminate the contract between the health authority and the state, and immediately convert the health authority Medi-Cal beneficiaries in accordance with paragraph (5) in order to ensure uninterrupted provision of health care services to the beneficiaries and to minimize financial disruption to providers. The action of the director shall be the final administrative determination. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be converted under paragraph (5) may make a choice to be enrolled in another managed care plan, if one is available, in full compliance with federal freedom-of-choice requirements.

(7) It is the intent of the Legislature that the department shall implement Medi-Cal capitated enrollments in a manner that ensures that appropriate levels of health care services will be provided to Medi-Cal beneficiaries and that appropriate levels of administrative services will be furnished to health care providers. The contract

between the department and the health authority shall authorize and permit the department to administer the number of covered Medi-Cal enrollments in such a manner that the health authority's provider network and administrative structure are able to provide appropriate and timely services to beneficiaries and to participating providers.

(8) In the event a health authority is terminated, files for bankruptcy, or otherwise no longer functions for the purpose for which it was established, the county shall, with respect to compensation for provision of health care services to beneficiaries, occupy no greater or lesser status than any other health care provider in the disbursement of assets of the health authority.

(9) Nothing in this subdivision shall be construed to impair or diminish the authority of the Commissioner of Corporations under the Knox-Keene Health Care Service Plan Act of 1975, nor shall anything in the section be construed to reduce or otherwise limit the obligation of a health authority licensed as a health care service plan to comply with the requirements of the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the health commissioner of Corporations promulgated thereunder.

(t) In the event a health authority may no longer function for the purposes for which it is established, at the time the health authority's then-existing obligations have been satisfied or the health authority's assets have been exhausted, the board of supervisors may, by ordinance, terminate the health authority.

(u) (1) Prior to the termination of the health authority, the board of supervisors shall notify the department of its intent to terminate the health authority. The department shall conduct an audit of the health authority's records within 30 days of the notification to determine the liabilities and assets of the health authority.

(2) The department shall report its findings to the board within 10 days of completion of the audit. The board shall prepare a plan to liquidate or otherwise dispose of the assets of the health authority and to pay the liabilities of the health authority to the extent of the health authority's assets, and present the plan to the department within 30 days upon receipt of these findings.

(v) Any assets of the health authority shall be disposed of pursuant to provisions contained in the contract entered into between the state and the health authority pursuant to this section.

(w) Upon termination of a health authority by the board, the county shall manage any remaining assets of the health authority until superseded by a department-approved plan. Any liabilities of the health authority shall not become obligations of the county upon either the termination of the health authority or the liquidation or disposition of the health authority's remaining assets.

SEC. 7. Section 14087.39 is added to the Welfare and Institutions Code, to read:

14087.39. (a) In any transfer of functions from county employees to a health authority established pursuant to Section 14087.35,

14087.36, or 14087.38, the health authority shall continue to recognize the employee organization that represented the employees performing those functions at the time of the transfer of duties.

(b) Any health authority to which this section applies shall be bound by the terms of any memorandum of understanding that is in effect as of the date of the transfer of functions for the duration of the transfer of functions, or until replaced by a subsequent memorandum of understanding between the health authority and the employee organization.

(c) Subdivision (b) shall not apply to administrative functions performed by the authority that are directly related to the operation of a health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code, unless the functions were transferred from county employees to the authority.

(d) In order to further the statewide interest in the development of an effective managed care delivery system to Medi-Cal beneficiaries in the county, it is necessary to ensure that the public health and hospital facilities of the county are financially viable so that the county may participate in that delivery system through the use of those facilities. Accordingly, notwithstanding any provision of the county charter to the contrary, the county shall be fully authorized to offer and provide medical care to members of the health service system of the county at the public health and hospital facilities of the county.

SEC. 7. Section 14087.35 of the Welfare and Institutions Code, as added by this act, for the establishment of a health authority for the City and County of San Francisco, Section 14087.36 of the Welfare and Institutions Code, as added by this act, for the establishment of a health authority for the County of Alameda, and Section 14087.38 of the Welfare and Institutions Code, as added by this act, for the establishment of health authorities in counties selected by the Director of Health Services with concurrence of the county, shall be interpreted independently and without reference to one another.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to enable the County of Alameda and the City and County of San Francisco to immediately proceed with their plans to establish an independent authority to assume the financial and operational responsibilities of the Medi-Cal managed care program and other health services, thereby providing an effective delivery of medical care and services to certain Medi-Cal populations, it is necessary that this act take effect immediately.

CHAPTER 643

An act to add Section 49413 to the Education Code, relating to schools.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 49413 is added to the Education Code, to read:

49413. (a) The Legislature recognizes the importance of first aid and cardiopulmonary resuscitation training. In enacting this section, it is the intent of the Legislature to encourage school districts and schools, individually or jointly, to develop a program whereby their staff and pupils understand the importance of this training and have an appropriate opportunity to develop these skills.

(b) A school district or school, individually or jointly with another school district or school, may provide a comprehensive program in first aid or cardiopulmonary resuscitation (CPR) training, or both, to pupils and employees. The program shall be developed using the following guidelines:

(1) The school district or school collaborates with existing local resources, including, but not limited to, parent teacher associations, hospitals, school nurses, fire departments, and other local agencies that promote safety, to make first aid or CPR training, or both, available to the pupils and employees of the school district or school.

(2) Each school district that develops a program, or the school district that has jurisdiction over a school that develops a program, compiles a list of resources for first aid or CPR information, to be distributed to all of the schools in the district.

(3) The first aid and CPR training are based on standards that are at least equivalent to the standards currently used by the American Red Cross or the American Heart Association.

(c) Each school district or school that develops a program pursuant to subdivision (b) shall report to the Assembly Education Committee on or before January 1, 1997, as to the success of the program and any concerns raised in the program, so that this information may be made available to other school districts throughout the state to better implement this program. The report shall contain information regarding how many school staff and pupils have participated in this training as well as the ratio of cardiopulmonary resuscitation or first aid trained staff to the total pupil enrollment on a per school basis.

CHAPTER 644

An act to amend Section 8570 of the Government Code, to amend Sections 21670 and 21670.1 of, and to add Section 21674.7 to, the Public Utilities Code, relating to airports.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 8570 of the Government Code is amended to read:

8570. The Governor may, in accordance with the State Emergency Plan and programs for the mitigation of the effects of an emergency in this state:

(a) Ascertain the requirements of the state or its political subdivisions for food, clothing, and other necessities of life in the event of an emergency.

(b) Plan for, procure, and pre-position supplies, medicines, materials, and equipment.

(c) Use and employ any of the property, services, and resources of the state as necessary to carry out the purposes of this chapter.

(d) Provide for the approval of local emergency plans.

(e) Provide for mobile support units.

(f) Provide for use of public airports.

(g) Institute training programs and public information programs.

(h) Make surveys of the industries, resources, and facilities, both public and private, within the state, as are necessary to carry out the purposes of this chapter.

(i) Plan for the use of any private facilities, services, and property and, when necessary, and when in fact used, provide for payment for that use under the terms and conditions as may be agreed upon.

(j) Take all other preparatory steps, including the partial or full mobilization of emergency organizations in advance of an actual emergency; and order those test exercises needed to insure the furnishing of adequately trained and equipped personnel in time of need.

SEC. 2. Section 21670 of the Public Utilities Code is amended to read:

21670. (a) The Legislature hereby finds and declares that:

(1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.

(2) It is the purpose of this article to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the

adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

(b) In order to achieve the purposes of this article, every county in which there is located an airport which is served by a scheduled airline shall establish an airport land use commission. Every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, shall establish an airport land use commission, except that the board of supervisors of the county may, after consultation with the appropriate airport operators and affected local entities and after a public hearing, adopt a resolution finding that there are no noise, public safety, or land use issues affecting any airport in the county which require the creation of a commission and declaring the county exempt from that requirement. The board shall, in this event, transmit a copy of the resolution to the Director of Transportation. For purposes of this section, "commission" means an airport land use commission. Each commission shall consist of seven members to be selected as follows:

(1) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county, except that if there are any cities contiguous or adjacent to the qualifying airport, at least one representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by paragraphs (2) and (3) shall each be increased by one.

(2) Two representing the county, appointed by the board of supervisors.

(3) Two having expertise in aviation, appointed by a selection committee comprised of the managers of all of the public airports within that county.

(4) One representing the general public, appointed by the other six members of the commission.

(c) Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.

(d) Each member shall promptly appoint a single proxy to represent him or her in commission affairs and to vote on all matters when the member is not in attendance. The proxy shall be designated in a signed written instrument which shall be kept on file at the commission offices, and the proxy shall serve at the pleasure of the appointing member. A vacancy in the office of proxy shall be filled promptly by appointment of a new proxy.

(e) A person having an "expertise in aviation" means a person who, by way of education, training, business, experience, vocation, or avocation has acquired and possesses particular knowledge of, and familiarity with, the function, operation, and role of airports, or is an elected official of a local agency which owns or operates an airport.

SEC. 3. Section 21670.1 of the Public Utilities Code is amended to read:

21670.1. (a) Notwithstanding any other provision of this article, if the board of supervisors and the city selection committee of mayors in the county each makes a determination by a majority vote that proper land use planning can be accomplished through the actions of an appropriately designated body, then the body so designated shall assume the planning responsibilities of an airport land use commission as provided for in this article, and a commission need not be formed in that county.

(b) A body designated pursuant to subdivision (a) which does not include among its membership at least two members having an expertise in aviation, as defined in subdivision (e) of Section 21670, shall, when acting in the capacity of an airport land use commission, be augmented so that that body, as augmented, will have at least two members having that expertise. The commission shall be constituted pursuant to this section on and after March 1, 1988.

(c) (1) Notwithstanding subdivisions (a) and (b), and subdivision (b) of Section 21670, if the board of supervisors of a county and each affected city in that county each makes a determination that proper land use planning pursuant to this article can be accomplished pursuant to this subdivision, then a commission need not be formed in that county.

(2) If the board of supervisors of a county and each affected city makes a determination that proper land use planning may be accomplished and a commission is not formed pursuant to paragraph (1) of this subdivision, that county and the appropriate affected cities having jurisdiction over an airport, subject to the review and approval by the Division of Aeronautics of the department, shall do all of the following:

(A) Adopt processes for the preparation, adoption, and amendment of the comprehensive airport land use plan for each airport that is served by a scheduled airline or operated for the benefit of the general public.

(B) Adopt processes for the notification of the general public, landowners, interested groups, and other public agencies regarding the preparation, adoption, and amendment of the comprehensive airport land use plans.

(C) Adopt processes for the mediation of disputes arising from the preparation, adoption, and amendment of the comprehensive airport land use plans.

(D) Adopt processes for the amendment of general and specific plans to be consistent with the comprehensive airport land use plans.

(E) Designate the agency that shall be responsible of the preparation, adoption, and amendment of each comprehensive airport land use plan.

(3) The Division of Aeronautics of the department shall review the processes adopted pursuant to paragraph (2), and shall approve the processes if the division determines that the processes are

consistent with the procedure required by this article and will do all of the following:

(A) Result in the preparation, adoption, and implementation of plans within a reasonable amount of time.

(B) Rely on the height, use, noise, safety, and density criteria that are compatible with airport operations, as established by this article, and referred to as the Airport Land Use Planning Handbook, published by the division, and any applicable federal aviation regulations, including, but not limited to, Part 77 (commencing with Section 77.1) of Title 14 of the Code of Federal Regulations.

(C) Provide adequate opportunities for notice to, review of, and comment by the general public, landowners, interested groups, and other public agencies.

(4) If the county does not comply with the requirements of paragraph (3) within 120 days, then the plan and amendments shall not be considered adopted pursuant to this article and a commission shall be established within 90 days of the determination of noncompliance by the division and a plan shall be adopted pursuant to this article within 90 days of the establishment of the commission.

(d) A commission need not be formed in a county that has contracted for the preparation of comprehensive airport land use plans with the Division of Aeronautics under the California Aids to Airport Program (Title 21 (commencing with Section 4050) of the California Code of Regulations), Project Ker-VAR 90-1, and that submits all of the following information to the Division of Aeronautics for review and comment that the county and the cities affected by the airports within the county, as defined by the plans:

(1) Agree to adopt and implement the comprehensive airport plans that have been developed under contract.

(2) Incorporated the height, use, noise, safety, and density criteria that are compatible with airport operations as established by this article, and referred to as the Airport Land Use Planning Handbook, published by the division, and any applicable federal aviation regulations, including, but not limited to, Part 77 (commencing with Section 77.1) of Title 14 of the Code of Federal Regulations as part of the general and specific plans for the county and for each affected city.

(3) If the county does not comply with this subdivision on or before May 1, 1995, then a commission shall be established in accordance with this article.

(e) (1) A commission need not be formed in a county if all of the following conditions are met:

(A) The county has only one public use airport that is owned by a city.

(B) (i) The county and the affected city adopt the elements in paragraph (2) of subdivision (d), as part of their general and specific plans for the county and the affected city.

(ii) The general and specific plans shall be submitted, upon adoption, to the Division of Aeronautics. If the county and the

affected city do not submit the elements specified in paragraph (2) of subdivision (d), on or before May 1, 1996, then a commission shall be established in accordance with this article.

SEC. 4. Section 21674.7 is added to the Public Utilities Code, to read:

21674.7. An airport land use commission that formulates, adopts or amends a comprehensive airport land use plan shall be guided by information prepared and updated pursuant to Section 21674.5 and referred to as the Airport Land Use Planning Handbook published by the Division of Aeronautics of the Department of Transportation.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 645

An act to add Section 1276.2 to the Health and Safety Code, relating to health facilities.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 1276.2 is added to the Health and Safety Code, to read:

1276.2. Standards and regulations adopted by the state department pursuant to Section 1276 shall not require the use of a registered nurse for the performance of any service or staffing of any position in freestanding skilled nursing facilities that may lawfully be performed or staffed by a licensed vocational nurse pursuant to the Vocational Nursing Practice Act (Chapter 6.5 (commencing with Section 2840) of Division 2 of the Business and Professions Code) and applicable federal regulations, when a facility is unable to obtain a registered nurse, except that a licensed vocational nurse employed in accordance with this section shall be a permanent employee of the facility. The facility shall make a good faith effort to obtain a registered nurse prior to determining that it is unable to obtain a registered nurse for the relevant shift, and this effort shall be noted in the facility's records. The facility shall make provision for a registered nurse to be available for consultation and professional assistance during the hours in which a licensed vocational nurse is used as provided by this section. The facility shall maintain a record

of the identity and phone number of the registered nurse that is to be available for consultation and professional assistance, as required by this section. If the substitution of a licensed vocational nurse for a registered nurse occurs more often than seven days per month, the facility shall obtain program flexibility approval from the state department pursuant to subdivision (b) of Section 1276. Nothing in this section shall permit a licensed vocational nurse to act as director of nurses pursuant to the Vocational Nursing Practice Act. This section applies to staffing for the evening and night shifts only, except that if the level of care is determined by the state department to be inadequate, the state department may require the facility to provide additional staffing.

This section shall not apply to the Medi-Cal regulations adopted pursuant to Sections 14114 and 14132.25 of the Welfare and Institutions Code.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 646

An act to amend Sections 14111 and 14111.5 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 14111 of the Welfare and Institutions Code is amended to read:

14111. (a) As permitted by federal law or regulations, for health care services provided in a long-term health care facility that are reimbursed by Medicare, a physician and surgeon may delegate any of the following to a nurse practitioner:

(1) Alternating visits required by federal law and regulations with a physician and surgeon.

(2) Any duties consistent with federal law and regulations within the scope of practice of nurse practitioners, so long as all of the following conditions are met:

(A) A physician and surgeon approves, in writing, the admission

of the individual to the facility.

(B) The medical care of each resident is supervised by a physician and surgeon.

(C) A physician and surgeon performs the initial visit and alternate required visits.

(b) This section does not authorize benefits not otherwise authorized by federal law or regulation.

(c) All responsibilities delegated to a nurse practitioner pursuant to this section shall be performed under the supervision of the physician and surgeon and pursuant to a standardized procedure among the physician and surgeon, nurse practitioner, and facility.

(d) No task that is required by federal law or regulation to be performed personally by a physician may be delegated to a nurse practitioner.

(e) Nothing in this section shall be construed as limiting the authority of a long-term health care facility to hire and employ nurse practitioners so long as that employment is consistent with federal law and within the scope of practice of a nurse practitioner.

SEC. 2. Section 14111.5 of the Welfare and Institutions Code is amended to read:

14111.5. (a) As permitted by federal law or regulations, for health care services provided in a long-term health care facility that are reimbursed under this chapter, a nurse practitioner may, to the extent consistent with his or her scope of practice, perform the following tasks otherwise required of a physician and surgeon:

(1) With respect to visits required by federal law or regulations, making alternating visits, or more frequent visits if the physician and surgeon is not available.

(2) Any duty or task that is consistent with federal and state law or regulation within the scope of practice of nurse practitioners, so long as all of the following conditions are met:

(A) A physician and surgeon approves, in writing, the admission of the individual to the facility.

(B) The medical care of each resident is supervised by a physician and surgeon.

(C) A physician and surgeon performs the initial visit and alternate required visits.

(b) This section does not authorize benefits not otherwise authorized by federal or state law or regulation.

(c) All responsibilities undertaken by a nurse practitioner pursuant to this section shall be performed in collaboration with the physician and surgeon and pursuant to a standardized procedure among the physician and surgeon, nurse practitioner, and facility.

(d) Except as provided in subdivision (a) to (c), inclusive, any task that is required by federal law or regulation to be performed personally by a physician may be delegated to a nurse practitioner who is not an employee of the long-term care facility.

(e) Nothing in this section shall be construed as limiting the authority of a long-term health care facility to hire and employ nurse

practitioners so long as that employment is consistent with federal law and with the scope of practice of a nurse practitioner.

CHAPTER 647

An act to amend Section 7139.3 of the Business and Professions Code, relating to contractors.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 7139.3 of the Business and Professions Code is amended to read:

7139.3. (a) The board may award grants to qualified public postsecondary educational institutions for the support of courses of study in construction management.

(b) Any organization of contractors, or organization of contractor organizations, incorporated under Division 2 (commencing with Section 5000) of the Corporations Code may request the board to award grants pursuant to subdivision (a) directly to qualified public postsecondary educational institutions of its choice. However, the total amount of money that may be awarded to one public postsecondary educational institution pursuant to subdivision (a) may not exceed an amount equal to 25 percent of the total funds available under this article.

(c) The board shall establish an advisory committee to recommend grant awards. The advisory committee shall be known as the Construction Management Education Account Advisory Committee and shall consist of 11 members, with at least one representative from each of the following: Associated General Contractors of California, Associated Builders and Contractors, California Building Industry Association, National Electrical Contractors Association, Plumbing-Heating-Cooling Contractor's Association, Southern California Contractor's Association, Associated General Contractors of San Diego, Engineering and Utility Contractors Association, Engineering Contractors Association, California Sheet Metal and Air Conditioning Contractor's Association, and one member representing the California State University and University of California construction management programs accredited by the American Council for Construction Education. Advisory committee member terms shall be for three years and the representatives shall be appointed by each identified group. Members of the advisory committee shall not receive per diem or reimbursement for traveling and other expenses pursuant to Section 103.

(d) The mission of the Construction Management Education

Account Advisory Committee is to maintain, and increase the quality and availability of, education programs for the construction industry. The primary focus is to provide financial resources not now available to accredited construction management programs in California colleges and universities to maintain and upgrade facilities and provide greater access by the industry to modern construction standards and management practices. The advisory committee shall do all of the following:

(1) Confirm the qualifications of programs applying for grants.

(2) Award less than full grants when the account has insufficient funds to award full grants to all qualifying programs.

(3) Receive and review year-end reports of use and impact of funds.

(4) Affirm applications for American Council for Construction Education accreditation and, when funds are available, award grants to complete the accreditation process.

(5) Promote close ties between feeder junior colleges and four-year construction management programs.

(6) Support development of new educational programs with specific emphasis on outreach to the construction industry at large.

CHAPTER 648

An act to add Chapter 9 (commencing with Section 92720) to Part 57 of the Education Code, relating to postsecondary education.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Chapter 9 (commencing with Section 92720) is added to Part 57 of the Education Code, to read:

CHAPTER 9. COMMUNITY-BASED HEALTH PROFESSIONS EDUCATION PARTNERSHIP PROGRAM

92720. The Legislature hereby finds and declares, as follows:

(a) There is an inadequate supply of physicians, family nurse practitioners, and physician assistants who provide primary care to individuals and families in low-income urban and rural areas of California.

(b) Current training for health professionals, which occurs almost exclusively in clinics and hospitals, rarely provides students with opportunities to provide community-based medical care to families in low-income neighborhoods. As a result, relatively few health professionals choose to practice in low-income neighborhoods after completion of their training.

(c) Most medical graduates are unprepared to deal with the complex interwoven social, cultural, economic, environmental, and educational aspects of disease prevention and health promotion. As a result, health professionals frequently have limited impact on the prevention or treatment of entrenched community health problems, including teen pregnancy, substance abuse, and domestic violence.

(d) Community-based education for health professionals has proven successful in other states, including Washington and Kentucky, in doing all of the following:

(1) Increasing the number of primary care health professionals practicing in low-income areas.

(2) Promoting the use of multi-disciplinary teams composed of health and human services professionals to jointly address community health problems.

(e) It is in the state's best interest that California medical schools be encouraged to develop coursework and practice for community-based education as a part of professional training for physicians, nurse practitioners, and physician assistants. It is further in the state's best interest that community-based education programs be evaluated to determine their effects on increasing the number of health care professionals practicing in low-income, medically underserved communities.

92721. (a) There is hereby established the Community-Based Health Professions Education Partnership Program to be administered by the University of California.

(b) The purpose of the program shall be to encourage the development of undergraduate medical and other health professional clerkships in primary care that combine health education, human services, and community involvement. The Legislature's goal, through these clerkships, is to increase the number of medical students who choose to enter residencies in primary care and to increase the number of health professionals who practice in primary care in low-income communities and medically underserved areas after their training programs are completed.

92722. The university is requested to incorporate the following into the program:

(a) A primary care clerkship as part of the undergraduate curriculum.

(b) Opportunities for nurse practitioners and physician assistants that combine clinical experience with participation in multidisciplinary teams that include other health, education, and human services professionals charged with identifying and addressing community health problems.

(c) Opportunities for students to be exposed to a comprehensive array of primary care health services—curative and preventive medicine, health promotion, and rehabilitation.

(d) Opportunities that allow participants to serve as members of a multiservice health and human resource committee, or a comparable arrangement, that includes members from other public

and private human services and educational agencies, for the purpose of offering integrated, comprehensive health, education, and human services to children and their families living in the community.

(e) Opportunities that place students in community or neighborhood primary care clinics in low-income communities, as determined by the university, or medically underserved areas, as determined by the Office of Statewide Health Planning and Development, and that have a working relationship with an advisory board that is made up of representatives from the community being served.

(f) Community involvement in the design and operation of the clerkship program, based on the identification of community needs and resources.

(g) Culturally appropriate program governance, staff, and services.

92723. The university is requested to track and report all of the following factors:

(a) The percentage of medical students participating, after residency, in primary care in low-income communities, as determined by the university, or medically underserved areas, as determined by the Office of Statewide Health Planning and Development.

(b) The rate of nurse practitioners and physician assistants who, after training, are employed in primary care practice or low-income communities, as determined by the university, or medically underserved areas, as determined by the Office of Statewide Health Planning and Development.

(c) Whether the program has resulted in an increase in the rate of graduates practicing in low-income communities, as determined by the university, or medically underserved areas, as determined by the Office of Statewide Health Planning and Development.

92724. The university shall evaluate and report all of the following to the Legislature and the Governor, commencing July 1, 1997, and biennially thereafter:

(a) The percentage of medical student participants in the program who do either, or both, of the following:

(1) Choose residencies in primary care.

(2) After residency, practice in primary care.

(b) The utilization of primary care medical facilities included in the program.

(c) The historical utilization of emergency room facilities in neighborhoods served by the program one year prior to and one year after the implementation of the program.

(d) The cost of providing health services to families served by the program.

(e) The effectiveness of clinical and multidisciplinary training as components of professional education for physicians and surgeons, nurse practitioners, and physician assistants.

92725. (a) The program shall be considered successful if, after implementation of the program, all of the following occur:

(1) There is a 10 percent or greater increase in the rate of program graduates who choose to practice primary care over the average number of program graduates who chose to practice primary care during the previous five years.

(2) There is a decrease in the use of emergency room facilities for nonemergency procedures by persons served by the program from the use of emergency room facilities for nonemergency procedures during the previous five years.

(3) Families served by the program have received expanded health services without an increase in per capita health costs.

(b) Based on the evaluation of the program by the university pursuant to Section 92724, the Office of Statewide Health Planning and Development, in consultation with the Health Manpower Policy Commission, shall recommend to the Legislature on or before January 1, 1998, whether funding for the program should be expanded to include other medical schools.

(c) If the recommendation is made to expand the program pursuant to subdivision (b), it is the intent of the Legislature that the program be expanded to allow private medical schools and private schools of nursing to participate in the program in order to permit substantially all students who are training to become physicians and surgeons, nurse practitioners, or physician assistants to receive a portion of their training in a community-based education program.

92726. This chapter shall not apply to the University of California unless the Regents of the University of California, by resolution, make it applicable.

SEC. 2. Funding for the program created pursuant to Chapter 9 (commencing with Section 92720) of Part 57 of the Education Code shall be provided as specified in the Supplemental Report of the Budget Act of 1994.

CHAPTER 649

An act to amend Section 1305 of the Penal Code, relating to bail.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 1305 of the Penal Code is amended to read:

1305. (a) A court shall declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for any of the following:

(1) Arraignment.

(2) Trial.

(3) Judgment.

(4) Any other occasion prior to the pronouncement of judgment if the defendant's presence in court is lawfully required.

(5) To surrender himself or herself in execution of the judgment after appeal.

However, the court shall not have jurisdiction to declare a forfeiture and the bail shall be released of all obligations under the bond if the case is dismissed or if no complaint is filed within 15 days from the date of arraignment.

(b) If the amount of the bond or money or property deposited exceeds four hundred dollars ($400), the clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety or the depositor of money posted instead of bail. At the same time, the court shall mail a copy of the forfeiture notice to the bail agent whose name appears on the bond. The clerk shall also execute a certificate of mailing of the forfeiture notice and shall place the certificate in the court's file. If the notice of forfeiture is required to be mailed pursuant to this section, the 180-day period provided for in this section shall be extended by a period of five days to allow for the mailing.

If the surety is an authorized corporate surety, and if the bond plainly displays the mailing address of the corporate surety and the bail agent, then notice of the forfeiture shall be mailed to the surety at that address and to the bail agent, and mailing alone to the surety or the bail agent shall not constitute compliance with this section.

The surety or depositor shall be released of all obligations under the bond if any of the following conditions apply:

(1) The clerk fails to mail the notice of forfeiture in accordance with this section within 30 days after the entry of the forfeiture.

(2) The clerk fails to mail the notice of forfeiture to the surety at the address printed on the bond.

(3) The clerk fails to mail a copy of the notice of forfeiture to the bail agent at the address shown on the bond.

(c) (1) If the defendant appears either voluntarily or in custody after surrender or arrest in court within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice if the notice is required under subdivision (b), the court shall, on its own motion at the time the defendant first appears in court on the case in which the forfeiture was entered, direct the order of forfeiture to be vacated and the bond exonerated. If the court fails to so act on its own motion, then the surety's or depositor's obligations under the bond shall be immediately vacated and the bond exonerated. An order vacating the forfeiture and exonerating the bond may be made on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

(2) If, within the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, and is subsequently released from custody prior to an appearance in court, the court shall, on its own

motion, direct the order of forfeiture to be vacated and the bond exonerated. If the court fails to so act on its own motion, then the surety's or depositor's obligations under the bond shall be immediately vacated and the bond exonerated. An order vacating the forfeiture and exonerating the bond may be made on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

(3) If, outside the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, the court shall vacate the forfeiture and exonerate the bail.

(4) Except as provided in paragraphs (1) and (2), the court, in its discretion, may require that the bail provide 10 days' prior notice to the applicable prosecuting agency, as a condition precedent to vacating the forfeiture. The notice may be given by the surety insurer, the bail agent, the surety, or the depositor of money or property, any of whom may appear in person or through an attorney. A motion filed in a timely manner within the 180-day period may be heard within 30 days of the expiration of the 180-day period. The court may extend the 30-day period upon a showing of good cause.

In lieu of exonerating the bond, the court may order the bail reinstated and the defendant released on the same bond if both of the following conditions are met:

(A) The bail is given prior notice of the reinstatement.

(B) The bail has not surrendered the defendant.

(d) In the case of a permanent disability, the court shall direct the order of forfeiture to be vacated and the bail or money or property deposited as bail exonerated if, within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice if notice is required under subdivision (b), it is made apparent to the satisfaction of the court that both of the following conditions are met:

(1) The defendant is deceased or otherwise permanently unable to appear in the court due to illness, insanity, or detention by military or civil authorities.

(2) The absence of the defendant is without the connivance of the bail.

(e) In the case of a temporary disability, the court shall order the tolling of the 180-day period provided in this section during the period of temporary disability, provided that it appears to the satisfaction of the court that the following conditions are met:

(1) The defendant is temporarily disabled by reason of illness, insanity, or detention by military or civil authorities.

(2) Based upon the temporary disability, the defendant is unable to appear in court during the remainder of the 180-day period.

(3) The absence of the defendant is without the connivance of the bail.

The period of the tolling shall be extended for a reasonable period of time, at the discretion of the court, after the cessation of the disability to allow for the return of the defendant to the jurisdiction

of the court.

(f) In all cases where a defendant is in custody beyond the jurisdiction of the court that ordered the bail forfeited, and the prosecuting agency elects not to extradite the defendant, the court shall vacate the forfeiture and exonerate the bond on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

CHAPTER 650

An act to amend Sections 1240 and 42127.8 of, to add Chapter 6.5 (commencing with Section 10550) to Part 7 of, Chapter 27 (commencing with Section 17850) to Part 10 of, and Article 4 (commencing with Section 42140) to Chapter 6 of Part 24 of, and to repeal Chapter 1.5 (commencing with Section 41100) of Part 24 of, the Education Code, and to amend Section 3540.2 of the Government Code, relating to school districts.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. The Legislature finds and declares all of the following.

(a) School districts are facing increasing difficulty in making sound multiyear financial plans because of ongoing uncertainties about funding levels and service demands.

(b) The public has a right to know about the long-term financial consequences of proposed multiyear costs incurred by school districts.

(c) Public disclosure of school district fiscal information will provide the public with improved information about current and future budgetary implications of school district financial obligations and may assist school districts in avoiding inadvertent cost obligations.

(d) The public's right to know especially applies when a school district incurs costs for, but does not budget for, ongoing obligations such as retiree health benefits, workers' compensation, sizeable non-voter-approved debt, or terms of a collective bargaining agreement.

(e) Technology will improve school districts' ability to make financial plans and in doing so will help eliminate audit exceptions, thereby resulting in savings to the state.

SEC. 2. Section 1240 of the Education Code is amended to read:

1240. The superintendent of schools of each county shall do all of the following:

(a) Superintend the schools of his or her county.

(b) Visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(c) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.

(d) Keep in his or her office the reports of the Superintendent of Public Instruction.

(e) Keep a record of his or her official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants for certificates who have been examined, which shall be open to the inspection of any applicant or his or her authorized agent.

(f) Enforce the course of study.

(g) Enforce the use of state textbooks and of high school textbooks regularly adopted by the proper authority.

(h) Preserve carefully all reports of school officers and teachers.

(i) Deliver to his or her successor, at the close of his or her official term, all records, books, documents, and papers belonging to the office, taking a receipt for them, which shall be filed with the State Department of Education.

(j) (1) Submit two reports during the fiscal year to the county board of education in accordance with the following:

(A) The first report shall cover the financial and budgetary status of the county office of education for the period ending October 31. The second report shall cover the period ending January 31. Both reports shall be reviewed by the county board of education and approved by the county superintendent of schools no later than 45 days after the close of the period being reported.

(B) As part of each report, the superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for two subsequent fiscal years. The certifications shall be classified as positive, qualified, or negative, pursuant to standards prescribed by the Superintendent of Public Instruction, for the purposes of determining subsequent state agency actions pursuant to Section 1240.1. For purposes of this subdivision, a negative certification shall be assigned to any county office of education that, based upon current projections, will be unable to meet its financial obligations for the remainder of the fiscal year or for the subsequent fiscal year. A qualified certification shall be assigned to any county office of education that may not meet its financial obligations for the current fiscal year or two subsequent fiscal years. A positive certification shall be assigned to any county office of education that will meet its financial obligations for the current fiscal year and subsequent two fiscal years. In accordance

with those standards, the Superintendent of Public Instruction may reclassify any certification. If a county office of education receives a negative certification, the Superintendent of Public Instruction, or his or her designee, may exercise the authority set forth in subdivision (c) of Section 1630. Copies of each certification, and of the report containing that certification, shall be sent to the Superintendent of Public Instruction at the time the certification is submitted to the county board of education. Copies of each qualified or negative certification, and of the report containing that certification, shall be sent to the Controller at the time the certification is submitted to the county board of education.

(2) All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent of Public Instruction, and shall be based on standards and criteria for fiscal stability adopted by the State Board of Education pursuant to Section 33127. The reports and supporting data shall be made available by the county superintendent of schools to any interested party upon request.

(3) This subdivision does not preclude the submission of additional budgetary or financial reports by the superintendent to the county board of education or to the Superintendent of Public Instruction.

(4) The county superintendent of schools is not responsible for the fiscal oversight of the community colleges in the county, however, he or she may perform financial services on behalf of those community colleges.

(k) When so requested, act as agent for the purchase of supplies for the city and high school districts of his or her county.

(*l*) For purposes of Section 44421.5, report to the Commission on Teacher Credentialing the identity of any certificated person who knowingly and willingly reports false fiscal expenditure data relative to the conduct of any educational program. This requirement applies only if, in the course of his or her normal duties, the county superintendent of schools discovers information that gives him or her reasonable cause to believe that false fiscal expenditure data relative to the conduct of any educational program has been reported.

SEC. 3. Chapter 6.5 (commencing with Section 10550) is added to Part 7 of the Education Code, to read:

CHAPTER 6.5. TELECOMMUNICATIONS

10550. (a) It is the intent of the Legislature that the State Department of Education, in conjunction with county superintendents of schools and others from the educational community, establish telecommunication standards that will support the efficient sharing of school business and administrative information. These standards shall allow schools, school districts, county superintendents of schools, and the department to establish interactive access to this information, reduce the reporting

requirements of local educational agencies, and assist local educational agencies in carrying out their financial and administrative responsibilities in a more effective manner.

(b) In addition to establishing telecommunication standards, it is the further intent of the Legislature that standardized financial information and student information being developed pursuant to Section 42103.3 and subdivision (k) of Section 51870 shall be among the initial information that is shared when telecommunication links are established.

(c) It is also the intent of the Legislature that funding be made available to encourage school districts and county superintendents of schools to connect existing networks to the telecommunication highway. The Legislature also intends that the provisions of this section be accomplished without requiring replacement of current hardware and software at the local level and that the aforementioned standards be developed and implemented without mandating specified proprietary hardware or software purchases.

10551. (a) For purposes of this chapter, "governing board" means the governing board set forth in subdivision (b) of Section 42127.8.

(b) It is the intent of the Legislature that Section 10550 be implemented by the governing board.

(c) The governing board shall be supported by a team of persons having extensive experience in the development of telecommunications systems, local and statewide area computer networks, as well as knowledge of the data and system needs of school business and administration. This team shall be operated under the immediate direction and supervision of an appropriate county superintendent of schools selected, in response to an application process, by the Superintendent of Public Instruction.

(d) The State Department of Education shall convene a committee of volunteers, to advise the governing board. This committee shall be composed of individuals who are school district or county office of education personnel and who have knowledge of financial and administrative data processing matters. Members of the committee shall assume their own expenses for service on the committee and the state shall not provide reimbursement for either the time served by, or the expenses of, the committee members. Two individuals shall be appointed to the committee by each of the following:

(1) The president of the California Association of School Business Officials.

(2) The president of the Association of California School Administrators.

(3) The president of the California School Boards Association.

(4) The president of the California Educational Data Processing Association.

(5) The Superintendent of Public Instruction.

(e) The committee shall be disbanded as of December 31, 1995.

10552. (a) By July 1, 1995, the governing board, with the assistance of the team established pursuant to subdivision (c) of Section 10551 and the advice of the committee established pursuant to subdivision (d) of Section 10551, shall establish telecommunication standards for use by the department and by county superintendents of schools in purchasing computer hardware or software for school business and administration. The standards shall focus on the ability to process and share financial and administrative information uniformly among county superintendents of schools and school districts as well as between county superintendents of schools and the department and shall be consistent with other departmental and national standards for telecommunication. The department shall disseminate those standards to county superintendents of schools by July 15, 1995, and publish those standards in the California School Accounting Manual.

(b) Any new or replacement financial and administrative data processing or telecommunication equipment purchased by a county superintendent of schools after July 15, 1995, may meet the standards developed pursuant to subdivision (a).

(c) Any new or replacement financial and administrative data processing or telecommunication equipment purchased by the department after July 1, 1995, may meet the standards developed pursuant to subdivision (a).

10553. (a) After the telecommunication standards developed pursuant to subdivision (a) of Section 10552 are established, each county superintendent of schools shall consult with each of the school districts under its jurisdiction about its specific telecommunication needs to enable the sharing of financial and administrative data at the local level.

(b) After telecommunication standards are established pursuant to subdivision (a) of Section 10552, each county office of education shall establish, by January 1, 1996, uniform standards for sharing financial and administrative information between school districts and the county office of education that, to the extent relevant, conform to the standard established pursuant to subdivision (a) of Section 10552 and that take into consideration the needs identified pursuant to subdivision (a). Thereafter, school districts may follow those standards when purchasing additional or replacement hardware or software for financial and administrative data processing. School districts shall not be required to replace current hardware or software as a result of the enactment of this chapter and any decision to make a purchase is a decision of the local agency and not a mandate of the state.

10554. (a) In order for the governing board to carry out its responsibilities pursuant to this chapter, there is hereby established the Educational Telecommunication Fund. The amount of moneys to be deposited in the fund shall be the amount of any offset made to the principal apportionments made pursuant to Sections 1909, 2558, 42238, 52616, and 56700, and Article 1.5 (commencing with

Section 52335) of Chapter 9 of Part 28, based on a finding that these apportionments were not in accordance with law. The maximum amount that may be annually deposited in the fund from the offset shall be one million dollars ($1,000,000), or if the total of the offset is less than one million dollars ($1,000,000), then the total amount of the offset. The Controller shall establish an account to receive and expend moneys in the fund. The placement of the moneys in the fund shall occur only upon a finding by the Superintendent of Public Instruction and the Director of Finance that the principal apportionments made pursuant to Sections 1909, 2558, 42238, 52616, and 56700, and Article 1.5 (commencing with Section 52335) of Chapter 9 of Part 28, were not in accordance with existing law, and were so identified pursuant to Sections 1624, 14506, 41020, 41020.2, 41320, 42127.2, and 42127.3, or an independent audit that was approved by the State Department of Education.

(b) Moneys in the fund established pursuant to subdivision (a) shall only be available for expenditure upon appropriation by the Legislature in the Budget Act.

(c) The moneys in the fund established pursuant to subdivision (a) may be expended by the governing board to carry out the purposes of this chapter, including for the following purposes:

(1) To support the activities of the team established pursuant to subdivision (c) of Section 10551.

(2) To assist the school districts and county superintendents of schools in purchasing both hardware and software to allow school districts, county superintendents of schools, and the State Department of Education to be linked for school business and administrative purposes. The governing board shall establish a matching share requirement that applicant school districts and county superintendents of schools must fulfill to receive those funds. It is the intent of the Legislature to encourage the distribution of grants to school districts and county superintendents of schools to the widest extent possible.

(3) To provide technical assistance through county offices of education to school districts in implementing the standards established pursuant to subdivision (a) of Section 10552.

(d) This section shall become inoperative as of January 1, 2000.

10555. By March 15 of each year, the governing board shall report to the Governor, the Legislature, the State Board of Education, and the Superintendent of Public Instruction on the progress that has been made to meet the objectives of this chapter, the status of activities related to meeting the objectives of this chapter, and any plan of the governing board for subsequent fiscal years to meet the objectives of this chapter.

SEC. 4. Chapter 27 (commencing with Section 17850) is added to Part 10 of the Education Code, to read:

CHAPTER 27. PUBLIC DISCLOSURE OF NON-VOTER-APPROVED DEBT

17850. (a) Upon the approval by the governing board of the school district to proceed with the issuance of certificates of participation revenue bonds, the school district shall notify the county superintendent of schools and the county auditor. The superintendent of the school district shall provide the repayment schedules for that debt obligation, and evidence of the ability of the school district to repay that obligation, to the county auditor, the county superintendent, the governing board, and the public. Within 15 days of the receipt of the information, the county superintendent of schools and the county auditor may comment publicly to the governing board of the school district regarding the capability of the school district to repay that debt obligation.

(b) Upon the approval by the county board of education to proceed with the issuance of certificates of participation or revenue bonds, the county superintendent of schools or superintendent of a school district for which the county board serves as governing board shall notify the Superintendent of Public Instruction. The county superintendent of schools or the superintendent of a school district for which the county board serves as the governing board shall provide the repayment schedules for that debt obligation and evidence of the ability of the county office of education or school district to repay that obligation, to the Superintendent of Public Instruction, the governing board, and the public. Within 15 days of the receipt of the information the Superintendent of Public Instruction may comment publicly to the county board of education regarding the capability of the county office of education or school district to repay that debt obligation.

SEC. 5. Chapter 1.5 (commencing with Section 41100) of Part 24 of the Education Code is repealed.

SEC. 6. Section 42127.8 of the Education Code is amended to read:

42127.8. (a) The governing board provided for in subdivision (b) shall establish a unit to be known as the County Office Fiscal Crisis and Management Assistance Team. The team shall consist of persons having extensive experience in school district budgeting, accounting, data processing, telecommunications, risk management, food services, pupil transportation, purchasing and warehousing, facilities maintenance and operation, personnel administration, organization, and staffing. The Superintendent of Public Instruction may appoint one employee of the State Department of Education to serve on the unit. The unit shall be operated under the immediate direction of an appropriate county office of education selected jointly, in response to an application process, by the Superintendent of Public Instruction and the Secretary of Child Development and Education.

(b) The unit established under subdivision (a) shall be selected and governed by an eleven-member governing board consisting of

one representative chosen by the California County Superintendents Educational Services Association from each of the 10 county service regions designated by the association, and one representative from the State Department of Education chosen by the Superintendent of Public Instruction.

(c) The Superintendent of Public Instruction may request the unit to provide the assistance described in subdivision (b) of Section 1624, Section 1630, Section 33132, subdivision (b) of Section 42127.3, subdivision (c) of Section 42127.6, and Section 42127.9, and to review the fiscal and administrative condition of any county office of education.

(d) In addition to the functions described in subdivision (c), the unit shall do all of the following:

(1) Provide fiscal management assistance, at the request of any school district or county office of education. Each school district or county office of education receiving that assistance shall be required to pay the onsite personnel costs and travel costs incurred by the unit for that purpose, pursuant to rates determined by the governing board established under subdivision (b). The governing board annually shall distribute rate information to each school district and county office of education.

(2) Facilitate training for members of the governing board of the school district, district and county superintendents, chief financial officers within the district, and schoolsite personnel whose primary responsibility is to address fiscal issues. Training services shall emphasize efforts to improve fiscal accountability and expand the fiscal competency of local agencies. The unit shall use state professional associations , private organizations, and public agencies to provide guidance, support, and the delivery of any training services.

(3) Facilitate fiscal management training through the 10 county service regions to county office of education staff to ensure that they develop the technical skills necessary to perform their fiduciary duty. The governing board established pursuant to subdivision (b) shall determine the extent of the training that is necessary to comply with this paragraph.

(4) Produce a training calendar, to be disseminated semiannually to each county service region, that publicizes all of the fiscal training services that are being offered at the local, regional, and state levels.

(e) The governing board shall reserve not less than 25 percent, nor more than 50 percent, of its revenues each year for expenditure for the costs of contracts and professional services as management assistance to school districts or county superintendents of schools in which the board determines that a fiscal emergency exists.

(f) The governing board established under subdivision (b) may levy an annual assessment against each county office of education that elects to participate under this section in an amount not to exceed twenty cents ($0.20) per unit of total average daily attendance for all school districts within the county. The revenues

collected pursuant to that assessment shall be applied to the expenses of the unit.

(g) The governing board established under subdivision (b) may pay to the State Department of Education, from any available funds, a reasonable amount to reimburse the department for actual administrative expenses incurred in the review of the budgets and fiscal conditions of school districts and county superintendents of schools.

(h) When employed as a fiscal adviser by the State Department of Education pursuant to Section 1630, employees of the unit established pursuant to subdivision (a) shall be considered employees of the department for purposes of errors and omissions liability insurance.

SEC. 7. Article 4 (commencing with Section 42140) is added to Chapter 6 of Part 24 of the Education Code, to read:

Article 4. Public Disclosure of Fiscal Obligations

42140. (a) If a school district or county office of education provides health and welfare benefits for its employees upon their retirement, and those benefits will continue after the employees reach 65 years of age, the superintendent of the school district or county superintendent of schools, as appropriate, annually shall provide information to the governing board of the school district or the county board of education, as appropriate, regarding the estimated accrued but unfunded cost of those benefits. The estimate of cost shall be based upon an actuarial report that incorporates annual fiscal information and is obtained by the superintendent at least every three years. If the school district or county office of education regularly contracts for an actuarial report for other fiscal matters, a separate actuarial report is not required, if the estimate of costs required by this subdivision is separately and clearly set forth in that report.

(b) The cost information required by subdivision (a) and a copy of the actuarial report on which the estimated costs are based shall be presented by the superintendent at a public meeting of the governing board. At that meeting, the governing board shall disclose, as a separate agenda item, whether or not it will reserve a sufficient amount of money in its budget to fund the present value of the health and welfare benefits of existing retirees or the future cost of employees who are eligible for benefits in the current fiscal year, or both.

(c) The governing board annually shall certify to the county superintendent of schools the amount of money, if any, that it has decided to reserve in its budget for the cost of those benefits, and shall submit to the county superintendent of schools any budget revisions that may be necessary to account for that budget reserve.

(d) The county board of education annually shall certify to the Superintendent of Public Instruction the amount of money, if any,

that has been reserved in the budget of the county office of education for the cost of those benefits.

42141. (a) If a school district or county office of education is self-insured for workers' compensation claims, the superintendent of the school district or county superintendent of schools, as appropriate, annually shall provide information to the governing board of the school district or the county board of education, as appropriate, regarding the estimated accrued but unfunded cost of those claims. The estimate of costs shall be based on an actuarial report that incorporates annual fiscal information and is obtained by the superintendent at least every three years. If the school district or county office of education regularly contracts for an actuarial report for other fiscal matters, a separate actuarial report is not required, if the estimate of costs required by this subdivision is separately and clearly set forth in that report.

(b) The cost information required by subdivision (a) and a copy of the actuarial report on which the estimated costs are based shall be presented by the superintendent at a public meeting of the governing board. At that meeting, the governing board shall disclose, as a separate agenda item, whether or not it will reserve a sufficient amount of money in its budget to fund the present value of the accrued but unpaid workers' compensation claims or if it is otherwise decreasing the amount in its workers' compensation reserve fund.

(c) The governing board annually shall certify to the county superintendent of schools the amount of money, if any, that it has decided to reserve in its budget for the cost of those claims, and shall submit to the county superintendent of schools any budget revisions that may be necessary to account for that budget reserve.

(d) The county board of education annually shall certify to the Superintendent of Public Instruction the amount of money, if any, that has been reserved in the budget of the county office of education for the cost of those claims.

42142. Within 45 days of adopting a collective bargaining agreement, the superintendent of the school district shall forward to the county superintendent of schools any revisions to the school district's current year budget that are necessary to fulfill the terms of that agreement. Any additional costs to the school district that may result from the terms of the collective bargaining agreement also shall be reflected in any interim fiscal reports or multiyear fiscal projections.

SEC. 8. Section 3540.2 of the Government Code is amended to read:

3540.2. (a) A school district that has a qualified or negative certification pursuant to Section 42131 of the Education Code shall allow the county office of education in which the school district is located at least six working days to review and comment on any proposed agreement made between the exclusive representative and the public school employer, or designated representatives of the employer, pursuant to this chapter. The school district shall provide

the county superintendent of schools with all information relevant to yield an understanding of the financial impact of that agreement.

(b) The Superintendent of Public Instruction shall develop a format for use by the appropriate parties in generating the financial information required pursuant to subdivision (a).

(c) The county superintendent of schools shall notify the school district publicly within those six days if, in his or her opinion, the agreement reviewed pursuant to subdivision (a) would endanger the fiscal well-being of the school district.

(d) A school district shall provide the county superintendent of schools, upon request, with all information relevant to provide an understanding of the financial impact of any final collective bargaining agreement reached pursuant to Section 3543.2.

SEC. 9. It is the intent of the Legislature that money to fund the additional responsibilities of the Fiscal Crisis and Management Assistance Team imposed by the amendments made to subdivision (d) of Section 42127.8 of the Education Code by Section 6 of this bill, be appropriated in the annual Budget Act.

SEC. 10. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 651

An act to add Section 1795.28 to the Health and Safety Code, relating to patient health records.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 1795.28 is added to the Health and Safety Code, to read:

1795.28. (a) Providers of health services, licensed pursuant to Sections 1205, 1253, 1575, and 1726, that utilize electronic recordkeeping systems only, shall comply with the additional requirements of this section. These additional requirements do not apply to patient records if hard copy versions of the patient records

are retained.

(b) Any use of electronic recordkeeping to store patient records shall ensure the safety and integrity of those records at least to the extent of hard copy records. All providers set forth in subdivision (a) shall ensure the safety and integrity of all electronic media used to store patient records by employing an offsite backup storage system, an image mechanism that is able to copy signature documents, and a mechanism to ensure that once a record is input, it is unalterable.

(c) Original hard copies of patient records may be destroyed once the record has been electronically stored.

(d) The printout of the computerized version shall be considered the original as defined in Section 255 of the Evidence Code for purposes of providing copies to patients, the Division of Licensing and Certification, and for introduction into evidence in accordance with Sections 1550 and 1551 of the Evidence Code, in administrative or court proceedings.

(e) Access to electronically stored patient records shall be made available to the Division of Licensing and Certification staff promptly, upon request.

(f) This section does not exempt licensed clinics, health facilities, adult day health care centers, and home health agencies from the requirement of maintaining original copies of patient records that cannot be electronically stored.

(g) Any health care provider subject to this section, choosing to utilize an electronic recordkeeping system, shall develop and implement policies and procedures to include safeguards for confidentiality and unauthorized access to electronically stored patient health records, authentication by electronic signature keys, and systems maintenance.

(h) Nothing contained in this chapter shall affect the existing regulatory requirements for the access, use, disclosure, confidentiality, retention of record contents, and maintenance of health information in patient records by health care providers.

(i) This chapter does not prohibit any provider of health care services from maintaining or retaining patient records electronically.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 652

An act to amend Section 31468 of the Government Code, and to add Sections 14087.31 and 14087.32 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 31468 of the Government Code is amended to read:

31468. (a) "District" means a district, formed under the laws of the state, located wholly or partially within the county other than a school district.

(b) "District" also includes any institution operated by two or more counties, in one of which there has been adopted an ordinance placing this chapter in operation.

(c) "District" also includes any organization or association authorized by Chapter 26 of the Statutes of 1935, as amended by Chapter 30 of the Statutes of 1941, or by Section 50024, which organization or association is maintained and supported entirely from funds derived from counties, and the board of any retirement system is authorized to receive the officers and employees of that organization or association into the retirement system managed by the board.

(d) "District" also includes, but is not limited to, any sanitary district formed under Part 1 (commencing with Section 6400) of Division 6 of the Health and Safety Code.

(e) "District" also includes any city, public authority, public agency, and any other political subdivision or public corporation formed or created under the Constitution or laws of this state and located or having jurisdiction wholly or partially within the county.

(f) "District" also includes any nonprofit corporation or association conducting an agricultural fair for the county pursuant to a contract between the corporation or association and the board of supervisors under the authority of Section 25905 of the Government Code.

(g) "District" also includes the Regents of the University of California, but with respect only to employees who were employees of a county in a county hospital, who became university employees pursuant to an agreement for transfer to the regents of a county hospital or of the obligation to provide professional medical services at a county hospital, and who under that agreement had the right and did elect to continue membership in the county's retirement system established under this chapter.

(h) "District" also includes the South Coast Air Quality Management District, a new public agency created on February 1,

1977, pursuant to Chapter 5.5 (commencing with Section 40400) of Part 3 of Division 26 of the Health and Safety Code.

(1) Employees of the South Coast Air Quality Management District shall be deemed to be employees of a new public agency occupying new positions on February 1, 1977. On that date, those new positions are deemed not to have been covered by any retirement system.

(2) No retirement system coverage shall be effected for an employee of the South Coast Air Quality Management District who commenced employment with the district during the period commencing on February 1, 1977, and ending on December 31, 1978, unless and until the employee shall have elected whether to become a member of the retirement association established in accordance with this chapter for employees of Los Angeles County or the retirement association established in accordance with this chapter for employees of San Bernardino County. The election shall occur before January 1, 1980. Any such employee who fails to make the election provided for herein shall be deemed to have elected to become a member of the retirement association established in accordance with this chapter for the County of Los Angeles.

(3) The South Coast Air Quality Management District shall make application to the retirement associations established in accordance with this chapter for employees of Los Angeles County and San Bernardino County for coverage of employees of the South Coast Air Quality Management District.

(4) An employee of the South Coast Air Quality Management District who commenced employment with the district during the period commencing on February 1, 1977, and ending on December 31, 1978, and who has not terminated employment before January 1, 1980, shall be covered by the retirement association elected by the employee pursuant to paragraph (2). That coverage shall be effected no later than the first day of the first month following the date of the election provided for in paragraph (2).

(5) Each electing employee shall receive credit for all service with the South Coast Air Quality Management District. However, the elected retirement association may require, as a prerequisite to granting that credit, the payment of an appropriate sum of money or the transfer of funds from another retirement association in an amount determined by an enrolled actuary and approved by the elected retirement association's board. The amount to be paid shall include all administrative and actuarial costs of making that determination. The amount to be paid shall be shared by the South Coast Air Quality Management District and the employee. The share to be paid by the employee shall be determined by good faith bargaining between the district and the recognized employee organization, but in no event shall the employee be required to contribute more than 25 percent of the total amount required to be paid. The elected retirement association's board shall not grant that credit for that prior service unless the request for that credit is made

to, and the required payment deposited with, the elected retirement association's board no earlier than January 1, 1980, and no later than June 30, 1980. The foregoing shall have no effect on any such employee's rights to reciprocal benefits under Article 15 (commencing with Section 31830).

(6) An employee of the South Coast Air Quality Management District who commenced employment with the district after December 31, 1978, shall be covered by the retirement association established in accordance with this chapter for employees of San Bernardino County. That coverage shall be effected as of the first day of the first month following the employee's commencement date.

(7) Notwithstanding paragraphs (2) and (4) above, employees of the South Coast Air Quality Management District who were employed between February 1, 1977, and December 31, 1978, and who terminate their employment between February 1, 1977, and January 1, 1980, shall be deemed to be members of the retirement association established in accordance with this chapter for the employees of Los Angeles County commencing on the date of their employment with the South Coast Air Quality Management District.

(i) "District" also includes any nonprofit corporation which operates one or more museums within a county of the 15th class, as described by Sections 28020 and 28036 of the Government Code, as amended by Chapter 1204 of the Statutes of 1971, pursuant to a contract between the corporation and the board of supervisors of the county, and which has entered into an agreement with the board and the county setting forth the terms and conditions of the corporation's inclusion in the county's retirement system.

(j) "District" also includes any economic development association funded in whole or in part by a county of the 15th class, as described by Sections 28020 and 28036 of the Government Code, as amended by Chapter 1204 of the Statutes of 1971, and which has entered into an agreement with the board of supervisors and the county setting forth the terms and conditions of the association's inclusion in the county's retirement system.

(k) "District" also includes any special commission established in the Counties of Tulare and San Joaquin as described by Section 14087.31 of the Welfare and Institutions Code, pursuant to a contract between the special commission and the county setting forth the terms and conditions of the special commission's inclusion in the county's retirement system with the approval of the board of supervisors and the board of retirement.

SEC. 2. Section 14087.31 is added to the Welfare and Institutions Code, to read:

14087.31. (a) It is necessary that a special commission be established in the counties of Tulare and San Joaquin in order to meet the problems of delivery of publicly assisted medical care in the county and to demonstrate ways of promoting quality care and cost efficiency. Because there is no general law under which such a commission could be formed, the adoption of a special act and the

formation of a special commission is required.

(b) (1) The board of supervisors of the county of Tulare and the county of San Joaquin may, for each respective county, by ordinance, establish a commission to negotiate and enter into contracts authorized by Section 14087.3, and to arrange for the provision of health care services provided pursuant to this chapter. If the board of supervisors elects to enact this ordinance, all rights, powers, duties, privileges, and immunities vested in a county contracting with the department under this article shall be vested in the county commission.

(2) Health plans operated by the commission may also include, but are not limited to, individuals covered under Title XVIII of the Social Security Act (Subchapter 18 (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, individuals and groups entitled to coverage under other publicly supported programs, individuals and groups employed by public agencies or private businesses, and uninsured or indigent persons.

(c) The enabling ordinance shall specify the membership of the county commission, the qualifications for individual members, the manner of appointment, selection, or removal of commissioners, and how long they shall serve, and any other matters as the board of supervisors deems necessary or convenient for the conduct of the county commission's activities. Members of the commission shall be appointed by the county board of supervisors to represent the interests of the public, county, beneficiaries, physicians, hospitals, other health care providers, or other health care organizations. The commission so established shall be considered an entity separate from the county, shall file a statement required by Section 53051 of the Government Code, and shall have the power to acquire, possess, and dispose of real or personal property, as may be necessary for the performance of its functions, to employ personnel and contract for services required to meet its obligations, and to sue or be sued. Any obligations of a commission, statutory, contractual or otherwise, shall be obligations solely of the commission and shall not be the obligations of the county or of the state.

(d) Upon creation, the commission may borrow from the county, and the county may lend the commission funds or issue revenue anticipation notes to obtain those funds necessary to commence operations. Prior to commencement of operations, the commission shall be licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(e) In the event a commission may no longer function for the purposes for which it is established, at such time as the commission's then existing obligations have been satisfied or the commission's assets have been exhausted, the board of supervisors may, by ordinance, terminate the commission.

(f) Prior to the termination of the commission, the board of supervisors shall notify the department of its intent to terminate the

commission. The department shall conduct an audit of the commission's records within 30 days of the notification to determine the liabilities and assets of the commission. The department shall report its findings to the board within 10 days of completion of the audit. The board shall prepare a plan to liquidate or otherwise dispose of the assets of the commission and to pay the liabilities of the commission to the extent of the commission's assets, and present the plan to the department within 30 days upon receipt of these findings.

(g) Any assets of the commission shall be disposed of pursuant to provisions contained in the contract entered into between the state and the commission pursuant to Section 14087.

(h) (1) It is the intent of the Legislature that if a commission is formed pursuant to this section, the county shall, with respect to its medical facilities and programs, occupy no greater or lesser status than any other health care provider with similar cost structure and patient population including, but not limited to, considerations of indigent care burden, capital requirements, graduate medical education, and disproportionate share status, in negotiating with the commission for contracts to provide health care services.

(2) Contracts between the department and the commission shall be on a nonbid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(3) Nothing in this subdivision shall be construed to interfere with or limit the commission from giving preference in negotiating to disproportionate share hospitals or other providers of health care to medically indigent or uninsured persons.

(i) Upon termination of the commission by the board, the county shall manage any remaining assets of the commission until superseded by a department approved plan. Any liabilities of the commission shall not become obligations of the county upon either the termination of the commission or the liquidation or disposition of the commission's remaining assets.

(j) The commission, its members, and employees, are protected by the immunities applicable to public entities and public employees governed by Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, except as provided by other statutes or regulations that apply expressly to the commission.

(k) Notwithstanding any other provision of law, a member of the commission shall not be deemed to be interested in a contract entered into by the commission within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if all of the following apply:

(1) The member was appointed to represent the interest of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations.

(2) The contract authorizes the member or the organization the member represents to provide services to Medi-Cal beneficiaries under the commission's programs.

(3) The contract contains substantially the same terms and conditions as contracts entered into with other individuals or organizations that the member was appointed to represent.

(4) The member does not influence or attempt to influence the commission or another member of the commission to enter into the contract in which the member is interested.

(5) The member discloses the interest to the commission and abstains from voting on the contract.

(6) The commission notes the member's disclosure and abstention in its official records and authorized the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

(*l*) All claims for money or damages against the commission shall be governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided by other statutes or regulations that expressly apply to the commission.

(m) Notwithstanding any other provision of law, except as otherwise provided in this section, a county shall not be liable for any act or omission of the commission.

(n) For the purposes of this section, "commission" means an entity separate from the county that meets the requirements of state and federal law and the quality, cost, and access criteria established by the department.

(o) The transfer of responsibility for health care services shall not relieve the county of its responsibility for indigent care pursuant to Section 17000.

(p) Notwithstanding any other provision of law, the commission may meet in closed session to consider and take action on matters pertaining to contracts, and to contract negotiations by commission staff with providers of health care services concerning all matters related to rates of payment.

(q) Notwithstanding the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code and Article 2 (commencing with Section 54340) of Chapter 6 of Division 2 of Title 5 of the Government Code, or any other provision of law, any "peer review body," as defined in paragraph (1) of subdivision (a) of Section 805 of the Business and Professions Code, formed pursuant to the powers granted to the commission authorized by this section, may, at its discretion and without notice to the public, meet in closed session, so long as the purpose of the meeting is the peer review body's discharge of its responsibility to evaluate and improve the quality of care rendered by health facilities of health practitioners, pursuant to the powers granted the commission. Any such peer review body and its members shall receive to the fullest extent all immunities, privileges, and protections available to such peer review bodies, their individual members, and persons or entities assisting in the peer review process, including, but not limited to, those afforded by Section 1370

of the Health and Safety Code.

(r) Notwithstanding any other provision of law, both the county and the commission shall be eligible to receive funding under subdivision (p) of Section 14163, and the commission shall be considered for all purposes to satisfy the requirements of subdivision (p) of Section 14163.

(s) The commission shall be deemed to be a public agency that is a unit of local government for purposes of all grant programs and other funding and loan guarantee programs.

(t) Notwithstanding any other provision of law, those records of the commission and of the county that reveal the rates of payment for health care services or the commission's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services for rate of payment, shall not be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, or any similar local law requiring disclosure of public records. However, three years after a contract or amendment to a contract is fully executed, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(u) Notwithstanding the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), Article 3 (commencing with Section 11200) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Chapter 9 (commencing with Section 54960) of Part 1 of Division 2 of Title 5 of the Government Code, or any other provision of state or local law requiring disclosure of public records, those records of the commission and the county that reveal the proceedings of a peer review body, as defined in paragraph (1) of subdivision (a) of Section 805 of the Business and Professions Code, formed pursuant to the powers granted to the commission authorized by this section, shall not be required to be disclosed. The records and proceedings of any such peer review body and its members shall receive to the fullest extent, all immunities, privileges, and protections available to such records and proceedings, including, but not limited to, those afforded by Section 1157 of the Evidence Code.

(v) (1) Provisions of the Evidence Code, the Government Code, including the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), the Civil Code, the Business and Professions Code, and other applicable law pertaining to the confidentiality of peer review activities of peer review bodies shall apply to the peer review activities of the commission. Peer review proceedings shall constitute an official proceeding authorized by law within the meaning of Section 47 of the Civil Code, and those privileges set forth in that section with respect to official proceedings shall apply to peer review proceedings of the commission. If the commission is required by law or contractual obligation to submit to the state or federal government

peer review information or information relevant to the credentialing of a participating provider, that submission shall not constitute a waiver of confidentiality. All laws pertaining to the confidentiality of peer review activities shall be construed together as extending, to the extent permitted by law, the maximum degree of protection of confidentiality.

(2) Notwithstanding any other provision of law, Section 1461 of the Health and Safety Code shall apply to hearings on the reports of hospital medical audit or quality assurance committees as they relate to network providers or applicants.

(w) Except as expressly provided by other provisions of this section, all exemptions and exclusions from disclosure as public records pursuant to the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 2 of Title 1 of the Government Code), including, but not limited to, those pertaining to trade secrets and information withheld in the public interest, shall be fully applicable for all state agencies and local agencies with respect to all writings that the commission is required to prepare, produce, or submit pursuant to this section.

(x) (1) The commission may use a computerized management information system in connection with the administration of its health delivery system, including the administration of the state-mandated two-plan Medi-Cal managed care model.

(2) Information maintained in the management information system that pertains to persons who are Medi-Cal applicants or recipients shall be confidential pursuant to Section 14100.2, and shall not be open to examination other than for purposes directly connected with the administration of the Medi-Cal program, including, but not limited to, those set forth in subdivision (c) of Section 14100.2. This safeguarded information includes, but is not limited to, the names and addresses of recipients, the medical services provided, the social and economic conditions or circumstances of the recipients, an evaluation by the commission of personal information, and medical data, including the diagnosis and past history of disease or disability.

(3) Information maintained in the management information system that pertains to peer review-related activities shall be confidential and subject to the full protections of the law with respect to the confidentiality of activities related to peer review generally.

(y) (1) The records of the commission, whether paper records, records maintained in the management information system, or records in any other form, that relate to rate or payment, including records relating to rate or payment determination, allocation or distribution methodologies, formulae or calculations, and records of the health authority that relate to contract negotiations with providers of health care for alternative rates, shall not be subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(2) The transmission of the records of the commission, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information, once transmitted to the county board of supervisors, shall be subject to this same exemption. The information, if compelled pursuant to an order of a court of competent jurisdiction or administrative body in a manner permitted by law, shall be limited to in camera review, and shall not be shared with the parties to the proceeding.

(3) The submission, to the Department of Corporations, of information described in this section for the purpose of obtaining licensure under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, or to the State Department of Health Services shall not constitute a waiver of exemption from disclosure.

(z) (1) (A) Notwithstanding any other provision of law, the governing board of the commission may order that a meeting held solely for the purpose of discussion or taking action on commission trade secrets, shall be held in closed session.

(B) The requirements of making a public report of actions taken in closed session and the vote or abstention of every member present may be limited to a brief general description devoid of the information constituting the trade secret.

(C) For purposes of this paragraph, "commission trade secret" means a trade secret as defined in subdivision (d) of Section 3426.1 of the Civil Code, and as applicable, in subdivision (c) of Section 32106 of the Health and Safety Code.

(2) The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to paragraph (1) that are provided to persons who have made the timely or standing request.

(3) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

SEC. 3. Section 14087.32 is added to the Welfare and Institutions Code, to read:

14087.32. (a) Commencing on the date the authority first receives Medi-Cal capitated payments for the provision of health care services to Medi-Cal beneficiaries and until a commission established pursuant to Section 14087.31 is in compliance with all the requirements regarding tangible net equity applicable to a health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, all of the following shall apply:

(1) The commission may select and design its automated management information system. The department, in cooperation with the commission, prior to making capitated payments, shall test the system to ensure that the system is capable of producing detailed,

accurate, and timely financial information on the financial condition of the commission, and any other information that is generally required by the department in its contracts with other health care service plans.

(2) In addition to the reports required by the Department of Corporations under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, and and the rules of the Commissioner of Corporations promulgated thereunder, a commission established pursuant to Section 14087.31 shall provide, on a monthly basis, to the department, the Department of Corporations, and the members of the commission, a copy of the automated report described in paragraph (1) and a projection of assets and liabilities, including those that have been incurred but not reported, with an explanation of material increases or decreases in current or projected assets of liabilities. The explanation of increases and decreases in assets or liabilities shall be provided, upon request, to a hospital, independent physicians' practice association or community clinic, which has contracted with the authority to provide health care services.

(3) In addition to the reporting and notification obligations the commission has under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, the chief executive officer or director of the commission shall immediately notify the department, the Department of Corporations, and the members of the commission, in writing, of any fact or facts that, in the chief executive officer's or director's reasonable and prudent judgment, is likely to result in the commission being unable to meet its financial obligations to health care providers or to other parties. The written notice shall describe the fact or facts, the anticipated fiscal consequences, and the actions which will be taken to address the anticipated consequences.

(4) The Department of Corporations shall not, in any way, waive or vary, nor shall the department request the Department of Corporations to waive or vary, the tangible net equity requirements for a commission under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, after three years from the date of commencement of capitated payments to the commission. Until the commission is in compliance with all of the tangible net equity requirements under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, and the rules of the Commissioner of Corporations adopted thereunder, the commission shall develop a stop-loss program appropriate to the risks of the commission, which program shall be satisfactory to both department and the Department of Corporations.

(5) (A) If the commission votes to file a petition of bankruptcy, or the county board of supervisors notifies the department of its intent to terminate the commission, the department shall immediately transfer the authority's Medi-Cal beneficiaries as follows:

(i) To other managed care contractors, when available, provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees.

(ii) To the extent that other managed care contractors are unavailable or the department determines that it is otherwise in the best interest of any particular beneficiary, to a fee-for-service reimbursement system pending the availability of managed care contractors provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees, or the department determines that providing care to any particular beneficiary pursuant to a fee-for-service reimbursement system is no longer necessary to protect the continuity of care or other interests of the beneficiary.

(B) Beneficiary eligibility for Medi-Cal shall not be affected by actions taken pursuant to subparagraph (A).

(C) Beneficiaries who have been or who are scheduled to be transferred to a fee-for-service reimbursement system or managed care contractor may make a choice to be enrolled in another managed care system, if one is available, in full compliance with the federal freedom-of-choice requirements.

(6) (A) A commission established pursuant to Section 14087.31 shall submit to a review of financial records when the department determines, based on data reported by the commission or otherwise, that the commission will not be able to meet its financial obligations to health care providers contracting with the commission. Where the review of financial records determines that the commission will not be able to meet its financial obligations to contracting health care providers for the provision of health care services, the Director of Health Services shall immediately terminate the contract between the commission and the state, and immediately transfer the commission's Medi-Cal beneficiaries in accordance with paragraph (5) in order to ensure uninterrupted provision of health care services to the beneficiaries and to minimize financial disruption to providers.

(B) The action of the Director of Health Services pursuant to subparagraph (A) shall be the final administrative determination. Beneficiary eligibility for Medi-Cal shall not be affected by this action.

(C) Beneficiaries who have been or who are scheduled to be transferred under paragraph (5) may make a choice to be enrolled in another managed care plan, if one is available, in full compliance with federal freedom-of-choice requirements.

(7) It is the intent of the Legislature that the department shall implement Medi-Cal capitated enrollments in a matter that ensures that appropriate levels of health care services will be provided to Medi-Cal beneficiaries and that appropriate levels of administrative services will be furnished to health care providers. The contract

between the department and the commission shall authorize and permit the department to administer the number of covered Medi-Cal enrollments in such a manner that the commission's provider network and administrative structure are able to provide appropriate and timely services to beneficiaries and to participating providers.

(8) In the event a commission is terminated, files for bankruptcy, or otherwise no longer functions for the purpose for which it was established, the county shall, with respect to compensation for provision of health care services to beneficiaries, occupy no greater or lesser status than any other health care provider in the disbursement of assets of the commission.

(9) Nothing in this section shall be construed to impair or diminish the authority of the Commissioner of Corporations under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, nor shall anything in the section be construed to reduce or otherwise limit the obligation of a commission licensed as a health care service plan to comply with the requirements of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code and the rules of the Commissioner of Corporations adopted thereunder.

(10) Except as expressly provided by other provisions of this section, all exemptions and exclusions from disclosure as public records pursuant to the Public Records Act (Chapter 5 (commencing with Section 65250) of Division 7 of Title 1 of the Government Code), including but not limited to, those pertaining to trade secrets and information withheld in the public interest, shall be fully applicable for all state agencies and local agencies with respect to all writings that the commission is required to prepare, produce or submit pursuant to this section.

CHAPTER 653

An act to add Sections 803.3 and 4227.4 to the Business and Professions Code, and to add Sections 1363.1 and 1373.19 to the Health and Safety Code, and to add Sections 10123.19 and 11512.33 to the Insurance Code, relating to health.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 803.3 is added to the Business and Professions Code, to read:

803.3. Any arbitration under a health care service plan contract for any death or personal injury resulting in an award for an amount in excess of thirty thousand dollars ($30,000) shall be a judgment for

purposes of subdivision (b) of Section 803.

SEC. 2. Section 4227.4 is added to the Business and Professions Code, to read:

4227.4. (a) "Licensed health care facility" or "facility," as used in this section, means a health facility licensed pursuant to Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code or a facility that is owned or operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or by an organization under common ownership or control with the health care service plan.

(b) "Injection card system," as used in this section, means a system that enables a facility to authorize an outpatient to receive injections of controlled substances at the facility pursuant to a prior written order by a physician and surgeon, through the use of a card that is maintained at the location in the facility where the injections are administered.

The injection card shall include, at a minimum, the following information: the date of authorization; the number and frequency of injections authorized; the name of the drug including the strength and amount authorized; the names of the prescribing physician and surgeon and the patient; the date and time of each injection; and the signature of the person administering the injection.

In addition, the patient's medical record maintained by the facility shall contain all of the information required under Section 4036 and Chapter 1 (commencing with Section 70001) of Division 5 of Title 22 of the California Code of Regulations.

(c) Notwithstanding any other provision of law, a licensed health care facility may provide for the administration of controlled substances through the use of an injection card system for controlled substances.

(d) A facility that employs an injection card system shall have a written protocol for the use of this system. The protocol shall be developed by a team of health care professionals, including at least one physician and surgeon, one registered nurse, and one pharmacist. The protocol shall provide for, but not be limited to, the following:

(1) Identification of drugs to be included in the injection card system.

(2) Distinction among classes of drugs.

(3) Periodic review of the efficacy of the injection card system, including, but not limited to, its effectiveness and safety for different classes of drugs.

(4) Determination as to whether each drug included in the injection card system requires the presence of a physician and surgeon or only the ready availability of a physician and surgeon.

(5) Implementation of recordkeeping systems that, at a minimum, record each injection and each visit, provide for the immediate entry of the injection in the patient's medical record,

provide a system for discontinuance of the order by the prescribing physician, and allow for ready identification of patterns of possible or actual patient abuse of controlled substances and other potential adverse drug interactions.

(6) Retention of the injection card by the facility at all times when a controlled substance is being administered.

(7) Adequate initial evaluation of patients, including, but not limited to, a determination as to whether each patient is a proper subject for the injection card system.

(8) Ongoing medical evaluation of the patient's response to the injection card system.

(9) All injection cards shall become a permanent part of the patient's medical record within 15 days from the date the last authorized dose is administered.

(e) Nothing in this section shall be construed to prohibit the use, or impose new requirements on the use, of an injection card system for noncontrolled substances.

SEC. 3. Section 1363.1 is added to the Health and Safety Code, to read:

1363.1. Any health care service plan that includes terms that require binding arbitration to settle disputes and that restrict, or provide for a waiver of, the right to a jury trial shall include, in clear and understandable language, a disclosure that meets all of the following conditions:

(a) The disclosure shall clearly state whether the plan uses binding arbitration to settle disputes, including specifically whether the plan uses binding arbitration to settle claims of medical malpractice.

(b) The disclosure shall appear as a separate article in the agreement issued to the employer group or individual subscriber and shall be prominently displayed on the enrollment form signed by each subscriber or enrollee.

(c) The disclosure shall clearly state whether the subscriber or enrollee is waiving his or her right to a jury trial for medical malpractice, other disputes relating to the delivery of service under the plan, or both, and shall be substantially expressed in the wording provided in subdivision (a) of Section 1295 of the Code of Civil Procedure.

(d) In any contract or enrollment agreement for a health care service plan, the disclosure required by this section shall be displayed immediately before the signature line provided for the representative of the group contracting with a health care service plan and immediately before the signature line provided for the individual enrolling in the health care service plan.

SEC. 4. Section 1373.19 is added to the Health and Safety Code, immediately following Section 1373.18, to read:

1373.19. Any health care service plan that includes a term that requires the parties to submit to binding arbitration in case of a medical malpractice claim or dispute shall, for those cases or disputes

for which the total amount of damages claimed is fifty thousand dollars ($50,000) or less, provide for selection by the parties of a single neutral arbitrator who shall have no jurisdiction to award more than fifty thousand dollars ($50,000). If the parties are unable to agree on the selection of a single neutral arbitrator, the method provided in Section 1281.6 of the Code of Civil Procedure shall be utilized. The provision shall not be subject to waiver by the plan.

SEC. 5. Section 10123.19 is added to the Insurance Code, immediately following Section 10123.18, to read:

10123.19. (a) Any disability insurance policy that includes terms that require binding arbitration to settle disputes and that restrict, or provide for a waiver of, the right to a jury trial shall include, in clear and understandable language, a disclosure that meets all of the following conditions:

(1) The disclosure shall clearly state whether the plan uses binding arbitration to settle disputes, including specifically whether the plan uses binding arbitration to settle claims of medical malpractice.

(2) The disclosure shall appear as a separate article in the agreement issued to the employer group or individual subscriber and shall be prominently displayed on the enrollment form signed by each subscriber or enrollee.

(3) In any disability insurance policy, the disclosure required by this section shall be displayed immediately before the signature line provided for the representative of the group contracting with a disability insurer and immediately before the signature line provided for the individual enrolling in the policy.

(b) Any disability insurance policy that includes a term that requires the parties to submit to binding arbitration in case of a medical malpractice claim or dispute shall, for those cases or disputes for which the total amount of damages claimed is fifty thousand dollars ($50,000) or less, provide for selection by the parties of a single neutral arbitrator who shall have no jurisdiction to award more than fifty thousand dollars ($50,000). If the parties are unable to agree on the selection of a single neutral arbitrator, the method provided in Section 1281.6 of the Code of Civil Procedure shall be utilized.

The provision shall not be subject to waiver by the policy.

SEC. 6. Section 11512.33 is added to the Insurance Code, immediately following Section 11512.29, to read:

11512.33. (a) Any nonprofit hospital service plan that includes terms that require binding arbitration to settle disputes and that restrict, or provide for a waiver of, the right to a jury trial shall include, in clear and understandable language, a disclosure that meets all of the following conditions:

(1) The disclosure shall clearly state whether the plan uses binding arbitration to settle disputes, including specifically whether the plan uses binding arbitration to settle claims of medical malpractice.

(2) The disclosure shall appear as a separate article in the agreement issued to the employer group or individual subscriber and shall be prominently displayed on the enrollment form signed by each subscriber or enrollee.

(3) In any nonprofit hospital service plan, the disclosure required by this section shall be displayed immediately before the signature line provided for the representative of the group contracting with a plan and immediately before the signature line provided for the individual enrolling in the plan.

(b) Any nonprofit hospital service plan that includes a term that requires the parties to submit to binding arbitration in case of a medical malpractice claim or dispute shall, for those cases or disputes for which the total amount of damages claimed is fifty thousand dollars ($50,000) or less, provide for selection by the parties of a single neutral arbitrator who shall have no jurisdiction to award more than fifty thousand dollars ($50,000). If the parties are unable to agree on the selection of a single neutral arbitrator, the method provided in Section 1281.6 of the Code of Civil Procedure shall be utilized.

The provision shall not be subject to waiver by the plan.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 654

An act to amend Sections 56066, 56133, 56375, 56455, 56837, 56839, 56839.1, and 56857 of, and to add Section 56844.1 to, the Government Code, relating to local agencies, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 56066 of the Government Code is amended to read:

56066. "Principal county" means the county having all or the greater portion of the entire assessed value, as shown on the last equalized assessment roll of the county or counties, of all taxable

property within a district or districts for which a change of organization or reorganization is proposed.

SEC. 2. Section 56133 of the Government Code is amended to read:

56133. A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the commission in the affected county. The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization. This section does not apply to contracts or agreements solely involving two or more public agencies. This section does not apply to contracts for the transfer of nonpotable or nontreated water. This section does not apply to contracts or agreements solely involving the provision of surplus water to agricultural lands for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county. This section shall not apply to an extended service that a city or district was providing on January 1, 1994.

SEC. 3. Section 56375 of the Government Code is amended to read:

56375. The commission shall have all of the following powers and duties subject to any limitations upon its jurisdiction set forth in this part:

(a) To review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization. Effective July 1, 1994, the commission may initiate proposals for (1) consolidation of districts, as defined in Section 56036, (2) dissolution, (3) merger, or (4) establishment of a subsidiary district, or a reorganization that includes any of these changes of organization. A commission shall only have the authority to initiate a (1) consolidation of districts, (2) dissolution, (3) merger, (4) establishment of a subsidiary district, or (5) a reorganization that include any of these changes of organization, if that change of organization or reorganization is consistent with a recommendation or conclusion of a study prepared pursuant to Section 56378 or 56425. However, a commission shall not have the power to disapprove an annexation to a city, initiated by resolution, of contiguous territory which the commission finds is either:

(1) Surrounded or substantially surrounded by the city to which the annexation is proposed or by that city and a county boundary or the Pacific Ocean if the territory to be annexed is substantially developed or developing, is not prime agricultural land as defined in Section 56064, is designated for urban growth by the general plan of the annexing city, and is not within the sphere of influence of

another city.

(2) Located within an urban service area which has been delineated and adopted by a commission, which is not prime agricultural land, as defined by Section 56064, and is designated for urban growth by the general plan of the annexing city.

As a condition to the annexation of an area, which is surrounded, or substantially surrounded, by the city to which the annexation is proposed, the commission may require, where consistent with the purposes of this division, that the annexation include the entire island of surrounded, or substantially surrounded, territory.

A commission shall not impose any conditions which would directly regulate land use density or intensity, property development, or subdivision requirements. When the development purposes are not made known to the annexing city, the annexation shall be reviewed on the basis of the adopted plans and policies of the annexing city or county. This paragraph does not prohibit a commission from requiring, as a condition to annexation, that a city prezone the territory to be annexed. However, the commission shall not specify how, or in what manner, the territory shall be prezoned.

(b) With regard to a proposal for annexation or detachment of territory to, or from, a city or district or with regard to a proposal for reorganization which includes annexation or detachment, to determine whether territory proposed for annexation or detachment, as described in its resolution approving the annexation, detachment, or reorganization, is inhabited or uninhabited.

(c) With regard to a proposal for consolidation of two or more cities or districts, to determine which city or district shall be the consolidated, successor city or district.

(d) To approve the annexation to a city after notice and hearing, and authorize the conducting authority to order annexation of the territory without an election, if the commission finds that the territory contained in an annexation proposal meets all of the following requirements:

(1) It does not exceed 75 acres in area, that area constitutes the entire island, and the island does not constitute a part of an unincorporated area which is more than 100 acres in area.

(2) It is surrounded in either of the following ways:

(A) Surrounded, or substantially surrounded, by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean.

(B) Surrounded by the city to which annexation is proposed and adjacent cities.

(3) It is substantially developed or developing. The finding required by this subparagraph shall be based upon one or more factors, including, but not limited to, any of the following factors:

(A) The availability of public utility services.

(B) The presence of public improvements.

(C) The presence of physical improvements upon the parcel or parcels within the area.

(4) It is not prime agricultural land, as defined by Section 56064.

(5) It will benefit from the annexation or is receiving benefits from the annexing city.

(e) To approve the annexation of unincorporated, noncontiguous territory, subject to the limitations of Section 56111, located in the same county as that in which the city is located, and which is owned by a city and used for municipal purposes and to authorize the conducting authority to annex the territory without notice and hearing.

(f) Subject to Section 56029, to designate in the resolution making determinations the conducting authority for proceedings.

(g) When a change of organization or a reorganization includes the annexation of inhabited territory to a city and the assessed value of land within the territory equals one-half or more of the assessed value of land within the city, or the number of registered voters residing within the territory equals one-half or more of the number of registered voters residing within the city, to determine as a condition of the proposal that the change of organization or reorganization shall also be subject to confirmation by the voters in an election to be called, held, and conducted within the territory of the city to which annexation is proposed.

(h) With respect to the incorporation of a new city or the formation of a new special district, to determine the number of registered voters residing within the proposed city or special district. The number of registered voters shall be calculated as of the time of the last report of voter registration by the county clerk to the Secretary of State prior to the date the first signature was affixed to the petition. The executive officer shall notify the petitioners of the number of registered voters resulting from this calculation.

(i) To adopt written procedures for the evaluation of proposals. The commission may adopt standards for any of the factors enumerated in Section 56841. Any standards adopted by the commission shall be written.

(j) To adopt standards and procedures for the evaluation of service plans submitted pursuant to Section 56653 and the initiation of a change of organization or reorganization pursuant to subdivision (a).

(k) To make and enforce regulations for the orderly and fair conduct of hearings by the commission.

(*l*) To incur usual and necessary expenses for the accomplishment of its functions.

(m) To appoint and assign staff personnel and to employ or contract for professional or consulting services to carry out and effect the functions of the commission.

(n) To review the boundaries of the territory involved in any proposal with respect to the definiteness and certainty of those boundaries, the nonconformance of proposed boundaries with lines of assessment or ownership, and other similar matters affecting the proposed boundaries.

(o) To waive the restrictions of Section 56109 if it finds that the application of the restrictions would be detrimental to the orderly development of the community and that the area that would be enclosed by the annexation or incorporation is so located that it cannot reasonably be annexed to another city or incorporated as a new city.

(p) To waive the application of Section 25210.90 or Section 22613 of the Streets and Highways Code if it finds the application would deprive an area of a service needed to ensure the health, safety, or welfare of the residents of the area and if it finds that the waiver would not affect the ability of a city to provide any service. However, within 60 days of the inclusion of the territory within the city, the legislative body may adopt a resolution nullifying the waiver.

(q) If the proposal includes the incorporation of a city, as defined in Section 56043, or the formation of a district, as defined in Section 2215 of the Revenue and Taxation Code, the commission shall determine the property tax revenue to be exchanged by the affected local agencies pursuant to Section 56842.

(r) To authorize a city or district to provide new or extended services outside its jurisdictional boundaries pursuant to Section 56133.

SEC. 4. Section 56455 of the Government Code is amended to read:

56455. If an independent special district adopts a resolution pursuant to subdivision (a) of Section 56453, it shall immediately forward a copy of the resolution to the executive officer. Upon receipt of those resolutions from a majority of independent special districts within a county, adopted by the districts within one year from the date that the first resolution was adopted, the commission, at its next regular meeting, shall adopt a resolution of intention pursuant to Section 56458.

SEC. 5. Section 56837 of the Government Code is amended to read:

56837. (a) If a petition for an annexation, a detachment, or a reorganization consisting solely of annexations or detachments, or both, or the formation of a county service area is signed by all of the owners of land within the affected territory of the proposed change of organization or reorganization, or if a resolution of application by a legislative body of an affected district, affected county, or affected city making a proposal for an annexation or detachment, or for a reorganization consisting solely of annexations or detachments, or both, or the formation of a county service area is accompanied by proof, satisfactory to the commission, that all the owners of land within the affected territory have given their written consent to that change of organization or reorganization, the commission may approve or disapprove the change of organization or reorganization, without notice and hearing by the commission. In those cases, the commission may also approve and authorize the conducting authority to conduct proceedings for the change of organization or

reorganization under any of the following conditions:

(1) Without notice and hearing.

(2) Without an election.

(3) Without notice, hearing, or an election.

(b) The executive officer shall give any affected agency mailed notice of the filing of the petition or resolution of application initiating proceedings by the commission. The commission shall not, without the written consent of the subject agency, take any further action on the petition or resolution of application for 10 days following that mailing. Upon written demand by an affected agency, filed with the executive officer during that 10-day period, the commission shall make determinations upon the petition or resolution of application only after notice and hearing on the petition or resolution of application. If no written demand is filed, the commission may make those determinations without notice and hearing. By written consent, which may be filed with the executive officer at any time, a subject agency may do any of the following:

(1) Waive the requirement of mailed notice.

(2) Consent to the commission making determinations without notice and hearing.

(3) Waive the requirement of mailed notice and consent to the commission making determinations without notice and hearing.

(c) The commission may waive conducting authority proceedings entirely if all of the following conditions apply:

(1) The affected territory is uninhabited.

(2) All the owners of land within the affected territory have given their written consent to the change of organization or reorganization.

(3) All affected agencies that will gain territory as a result of the change of organization or reorganization have consented in writing to a waiver of conducting authority proceedings.

SEC. 6. Section 56839 of the Government Code is amended to read:

56839. (a) If a majority of the members of each of the legislative bodies of two or more local agencies adopt substantially similar resolutions of application making proposals either for the consolidation of districts or for the reorganization of all or any part of the districts into a single local agency, the commission shall approve, or conditionally approve, the proposal. The commission shall authorize the board of supervisors to order the consolidation or reorganization without an election, except as otherwise provided in subdivision (b) of Section 57081.

(b) Before ordering any material change in the provisions or the terms and conditions of the consolidation or reorganization, as set forth in the proposals of the local agencies, the commission shall direct the executive officer to give each subject agency mailed notice of that change. The commission shall not, without the written consent of all subject agencies, take any further action on the consolidation or reorganization for 30 days following that mailing.

Upon written demand by any subject agency, filed with the executive officer during that 30-day period, the commission shall make determinations upon the proposals only after notice and hearing proposals. If no written demand is filed, the commission may make those determinations without notice and hearing. Application of any provision of this subdivision may be waived by consent of all of the subject agencies.

(c) Where the commission has initiated a change of organization or reorganization affecting more than one special district, the commission may utilize and is encouraged to utilize a reorganization committee to review the proposal.

SEC. 7. Section 56839.1 of the Government Code is amended to read:

56839.1. (a) Notwithstanding Sections 57077 and 57087, the commission shall authorize the conducting authority to order (1) the consolidation of districts, (2) dissolution, (3) merger, or (4) the establishment of a subsidiary district, or (5) a reorganization that includes any of these changes of organization without an election, except as otherwise provided in subdivision (b) of Section 57081 and Section 57092.

(b) Notwithstanding subdivision (a), the commission shall not authorize the conducting authority to order a merger or establishment of a subsidiary district without the consent of the affected city.

SEC. 8. Section 56844.1 is added to the Government Code, to read:

56844.1. Any change of organization or reorganization may be conditionally approved by a local agency formation commission subject to the certification by the California Coastal Commission of an amendment to the local coastal program of a city or a county.

SEC. 9. Section 56857 of the Government Code is amended to read:

56857. (a) Any person or affected agency may file a written request with the executive officer requesting amendments to or reconsideration of any resolution adopted by the commission making determinations. The request shall state the specific modification to the resolution being requested.

(b) Notwithstanding Section 56106, the deadlines set by this section are mandatory. The person or agency shall file the written request within 30 days of the adoption of the initial or superseding resolution by the commission making determinations or prior to the adoption of a resolution by the conducting authority pursuant to Chapter 4 (commencing with Section 57075), whichever is earlier. If no person or agency files a timely request, the commission shall not take any action pursuant to this section.

(c) Upon receipt of a timely request, the executive officer shall immediately notify the conducting authority which shall not take any further action until the commission acts on the request.

(d) Upon receipt of a timely request by the executive officer, the

time to file an action pursuant to Section 21167 of the Public Resources Code and any provisions of Part 4 (commencing with Section 57000) governing the time within which the conducting authority is to act shall be tolled for the time that the commission takes to act on the request.

(e) The executive officer shall place the request on the agenda of the next meeting of the commission for which notice can be given pursuant to this subdivision. The executive officer shall give notice of the consideration of the request by the commission in the same manner as for the original proposal. The executive officer may give notice in any other manner as he or she deems necessary or desirable.

(f) At that meeting, the commission shall consider the request and receive any oral or written testimony. The consideration may be continued from time to time but not to exceed 70 days from the date specified in the notice. The person or agency which filed the request may withdraw it at any time prior to the conclusion of the consideration by the commission.

(g) At the conclusion of its consideration, the commission may approve or disapprove with or without amendment, wholly, partially, or conditionally, the request. If the commission disapproves the request, it shall not adopt a new resolution making determinations, but shall direct the executive officer to notify the conducting authority of its action. If the commission approves the request, with or without amendment, wholly, partially, or conditionally, the commission shall adopt a resolution making determinations which shall supersede the resolution previously issued.

(h) The determinations of the commission shall be final and conclusive. No person or agency shall make any further request for the same change or a substantially similar change, as determined by the commission.

(i) Notwithstanding subdivision (h), clerical errors or mistakes may be corrected pursuant to Section 56854.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify at the earliest possible time what services are affected, it is necessary that this act take effect immediately.

CHAPTER 655

An act to amend Sections 66411.1 and 66499.35 of the Government Code, relating to subdivisions.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 66411.1 of the Government Code is amended to read:

66411.1. (a) Notwithstanding Section 66428, whenever a local ordinance requires improvements for a division of land which is not a subdivision of five or more lots, the regulations shall be limited to the dedication of rights-of-way, easements, and the construction of reasonable offsite and onsite improvements for the parcels being created. Requirements for the construction of offsite and onsite improvements shall be noticed by a statement on the parcel map, on the instrument evidencing the waiver of the parcel map, or by a separate instrument and shall be recorded on, concurrently with, or prior to the parcel map or instrument of waiver of a parcel map being filed for record.

(b) Notwithstanding Section 66428, fulfillment of the construction requirements shall not be required until the time a permit or other grant of approval for development of the parcel is issued by the local agency or, where provided by local ordinances, until the time the construction of the improvements is required pursuant to an agreement between the subdivider and the local agency, except that in the absence of an agreement, a local agency may require fulfillment of the construction requirements within a reasonable time following approval of the parcel map and prior to the issuance of a permit or other grant of approval for the development of a parcel upon a finding by the local agency that fulfillment of the construction requirements is necessary for either of the following reasons:

(1) The public health and safety.

(2) The required construction is a necessary prerequisite to the orderly development of the surrounding area.

SEC. 2. Section 66499.35 of the Government Code is amended to read:

66499.35. (a) Any person owning real property or a vendee of that person pursuant to a contract of sale of the real property may request, and a local agency shall determine, whether the real property complies with the provisions of this division and of local ordinances enacted pursuant thereto. Upon making the determination, the city or the county shall cause a certificate of compliance to be filed for record with the recorder of the county in which the real property is located. The certificate of compliance shall identify the real property and shall state that the division thereof

complies with applicable provisions of this division and of local ordinances enacted pursuant thereto. The local agency may impose a reasonable fee to cover the cost of issuing and recording the certificate of compliance.

(b) If a local agency determines that the real property does not comply with the provisions of this division or of local ordinances enacted pursuant thereto, it shall issue a certificate of compliance or a conditional certificate of compliance. A local agency may, as a condition to granting a certificate of compliance, impose any conditions which would have been applicable to the division of the property at the time the applicant acquired his or her interest therein, and which had been established at that time by this division or local ordinance enacted pursuant thereto, except that where the applicant was the owner of record at the time of the initial violation of the provisions of this division or of local ordinances enacted pursuant thereto who by a grant of the real property created a parcel or parcels in violation of this division or local ordinances enacted pursuant thereto, and the person is the current owner of record of one or more of the parcels which were created as a result of the grant in violation of the division or local ordinances enacted pursuant thereto, then the local agency may impose any conditions which would be applicable to a current division of the property. Upon making the determination and establishing the conditions the city or county shall cause a conditional certificate of compliance to be filed for record with the recorder of the county in which the real property is located. The certificate shall serve as notice to the property owner or vendee who has applied for the certificate pursuant to this section, a grantee of the property owner, or any subsequent transferee or assignee of the property that the fulfillment and implementation of these conditions shall be required prior to subsequent issuance of a permit or other grant of approval for development of the property.

Compliance with these conditions shall not be required until the time which a permit or other grant of approval for development of the property is issued by the local agency.

(c) A certificate of compliance shall be issued for any real property which has been approved for development pursuant to Section 66499.34.

(d) A recorded final map, parcel map, official map, or an approved certificate of exception shall constitute a certificate of compliance with respect to the parcels of real property described therein.

(e) An official map prepared pursuant to subdivision (b) of Section 66499.52 shall constitute a certificate of compliance with respect to the parcels of real property described therein and may be filed for record, whether or not the parcels are contiguous, so long as the parcels are within the same section or, with the approval of the city engineer or county surveyor, within contiguous sections of land.

(f) (1) Each certificate of compliance or conditional certificate of compliance shall include information the local agency deems

necessary, including, but not limited to, all of the following:

(A) Name or names of owners of the parcel.

(B) Assessor parcel number or numbers of the parcel.

(C) The number of parcels for which the certificate of compliance or conditional certificate of compliance is being issued and recorded.

(D) Legal description of the parcel or parcels for which the certificate of compliance or conditional certificate of compliance is being issued and recorded.

(E) A notice stating as follows:

This certificate relates only to issues of compliance or noncompliance with the Subdivision Map Act and local ordinances enacted pursuant thereto. The parcel described herein may be sold, leased, or financed without further compliance with the Subdivision Map Act or any local ordinance enacted pursuant thereto. Development of the parcel may require issuance of a permit or permits, or other grant or grants of approval.

(F) Any conditions to be fulfilled and implemented prior to subsequent issuance of a permit or other grant of approval for development of the property, as specified in the conditional certificate of parcel compliance.

(2) Local agencies may process applications for certificates of compliance or conditional certificates of compliance concurrently and may record a single certificate of compliance or a single conditional certificate of compliance for multiple parcels. Where a single certificate of compliance or conditional certificate of compliance is certifying multiple parcels, each as to compliance with the provisions of this division and with local ordinances enacted pursuant thereto, the single certificate of compliance or conditional certificate of compliance shall clearly identify, and distinguish between, the descriptions of each such parcel.

SEC. 3. This act is not intended to either enlarge or diminish the regulatory authority of a local agency, nor is this act intended to support or overrule the holding of the California Supreme Court in Morehart v. County of Santa Barbara, 7 Cal. 4th 725 (1994).

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 656

An act to add Section 22303.5 to the Education Code, relating to public retirement systems, and making an appropriation therefor.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 22303.5 is added to the Education Code, to read:

22303.5. (a) Notwithstanding any other provision of law, the board shall offer a midcareer retirement information program for the benefit of all members.

(b) In implementing this section, the board shall develop plans for the development and delivery of information to enhance awareness of the features, benefits, and services of the system, federal Social Security Act programs and benefits as they apply to members, and awareness of personal planning responsibilities. This information shall be provided to assist members in understanding the importance of financial, legal, estate, and personal planning, and how choices and options offered by the system may impact retirement.

(c) The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the Teachers' Retirement Fund to the board, in augmentation of Item 1920-001-835 of the Budget Act of 1994, to pay the startup expenses of the midcareer retirement information program required by this section.

(d) The board, at a public meeting, shall assess a participation fee for the recovery of all startup and ongoing expenses of the midcareer information program.

CHAPTER 657

An act to amend Section 2089.5 of, and to add, repeal, and add Section 2089.7 of, the Business and Profession Code, relating to medicine.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 2089.5 of the Business and Professions Code is amended to read:

2089.5. (a) Clinical instruction in the subjects listed in subdivision (b) of Section 2089 shall meet the requirements of this section and shall be considered adequate if the requirements of

subdivision (a) of Section 2089 and the requirements of this section are satisfied.

(b) Instruction in the clinical courses shall total a minimum of 72 weeks in length.

(c) Instruction in the core clinical courses of surgery, medicine, family medicine, pediatrics, obstetrics and gynecology, and psychiatry shall total a minimum of 40 weeks in length with a minimum of eight weeks instruction in surgery, eight weeks in medicine, six weeks in pediatrics, six weeks in obstetrics and gynecology, a minimum of four weeks in family medicine, and four weeks in psychiatry.

(d) Of the instruction required by subdivision (b), including all of the instruction required by subdivision (c), 54 weeks shall be performed in a hospital that sponsors the instruction and shall meet one of the following:

(1) Is a formal part of the medical school or school of osteopathic medicine.

(2) Has an approved residency program in family practice or in the clinical area of the instruction for which credit is being sought.

(3) Is formally affiliated with an approved medical school or school of osteopathic medicine located in the United States or Canada. If the affiliation is limited in nature, credit shall be given only in the subject areas covered by the affiliation agreement.

(4) Is formally affiliated with a medical school or a school of osteopathic medicine located outside the United States or Canada.

(e) If the institution, specified in subdivision (d), is formally affiliated with a medical school or a school of osteopathic medicine located outside the United States or Canada, it shall meet the following:

(1) The formal affiliation shall be documented by a written contract detailing the relationship between the medical school, or a school of osteopathic medicine, and hospital and the responsibilities of each.

(2) The school and hospital shall provide to the division a description of the clinical program. The description shall be in sufficient detail to enable the division to determine whether or not the program provides students an adequate medical education. The division shall approve the program if it determines that the program provides an adequate medical education. If the division does not approve the program, it shall provide its reasons for disapproval to the school and hospital in writing specifying its findings about each aspect of the program that it considers to be deficient and the changes required to obtain approval.

(3) The hospital, if located in the United States, shall be accredited by the Joint Commission on Accreditation of Hospitals, and if located in another country, shall be accredited in accordance with the law of that country.

(4) The clinical instruction shall be supervised by a full-time director of medical education, and the head of the department for

each core clinical course shall hold a full-time faculty appointment of the medical school or school of osteopathic medicine and shall be board certified or eligible, or have an equivalent credential in that specialty area appropriate to the country in which the hospital is located.

(5) The clinical instruction shall be conducted pursuant to a written program of instruction provided by the school.

(6) The school shall supervise the implementation of the program on a regular basis, documenting the level and extent of its supervision.

(7) The hospital-based faculty shall evaluate each student on a regular basis and shall document the completion of each aspect of the program for each student.

(8) The hospital shall ensure a minimum daily census adequate to meet the instructional needs of the number of students enrolled in each course area of clinical instruction, but not less than 15 patients in each course area of clinical instruction.

(9) The division, in reviewing the application of a foreign medical graduate, may require the applicant to submit a description of the clinical program, if the division has not previously approved the program, and may require the applicant to submit documentation to demonstrate that the applicant's clinical training met the requirements of this subdivision.

(10) The medical school or school of osteopathic medicine shall bear the reasonable cost of any site inspection by the division or its agents necessary to determine whether the clinical program offered is in compliance with this subdivision.

SEC. 2. Section 2089.7 is added to the Business and Professions Code, to read:

2089.7. (a) The requirement of four weeks of clinical course instruction in family medicine shall apply only to those applicants for licensure who graduate from medical school or a school of osteopathic medicine after May 1, 1998.

(b) For medical schools located outside of California, a required clinical course in primary care medicine may be deemed to fulfill the requirement in subdivision (a) if the division determines that the family medicine physicians who have a university appointment in the department or division of family medicine at the medical school located outside of California have significantly contributed to the development and implementation of the clinical course instruction in primary care medicine. If a medical school located outside of California does not have a division or department of family medicine, the family physician shall be a member in good standing of the chapter of the American Academy of Family Physicians of the state where the medical school is located.

(c) This section shall remain in effect only until June 30, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before June 30, 1999, deletes or extends that date.

SEC. 3. Section 2089.7 is added to the Business and Professions

Code, to read:

2089.7. (a) The requirement of four weeks of clinical course instruction in family medicine shall apply only to those applicants for licensure who graduate from medical school or a school of osteopathic medicine after May 1, 1998.

(b) This section shall become operative on June 30, 1999.

CHAPTER 658

An act to amend Section 10087.5 of the Insurance Code, relating to insurance.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 10087.5 of the Insurance Code is amended to read:

10087.5. (a) Every policy of residential property insurance which provides coverage for loss or damage to a structure from the peril of earthquake, but that provides for an uninsured deductible amount computed as a percentage, shall clearly disclose on the page setting forth the policy declarations the basis upon which the percentage is computed. This disclosure shall be printed in at least 10-point bold typeface.

(b) Every advertisement for a policy subject to subdivision (a) shall clearly disclose the deductible by stating the applicable percentage and the basis upon which the percentage is computed.

(c) Every policy of residential property insurance or policy endorsement covering an individual condominium unit for loss or damage from the peril of earthquake shall disclose on the policy declarations page, in at least 10-point bold typeface, if the policy or endorsement provides no coverage for loss assessment. If the policy or endorsement provides that loss assessment coverage is limited or changed as a result of any provision of the insurance policy or policy endorsement purchased by the corporation or association of property owners, or as a result of an assessment to pay a deductible amount under the corporation or association policy, the nature of the limitation or change shall also be disclosed on the policy declarations page. If because of lack of space or other practical limitations the policy declarations page cannot contain the disclosure required by this subdivision, the disclosure may be placed on the page immediately following the policy declarations page and shall be printed in at least 12-point bold typeface. Nothing in this subdivision shall be construed to require an insurer to provide a disclosure for loss assessment if the only limitations on loss assessment coverage are the policy limits.

(d) The commissioner shall issue a bulletin that specifies the language of the disclosure required by subdivision (c). The commissioner may specify different disclosures to explain more accurately different coverages offered by insurers.

CHAPTER 659

An act to add Section 14669.13 to the Government Code, relating to public works.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) Based upon information contained in a statewide property inventory, the state has substantial real estate needs and resources.

(b) The Department of General Services is developing strategic facilities plans for all major metropolitan regions in the state, including Los Angeles, utilizing the information contained in the inventory to create a framework of management principles and strategies to guide the state's real estate decisions through the next 10 years. The plans incorporate numerous strategies designed to consolidate state agencies, reduce the number of leased facilities, and improve access to the state's clientele base.

SEC. 2. Section 14669.13 is added to the Government Code, to read:

14669.13. (a) The Director of General Services may enter into an agreement to lease-purchase finance or lease with an option to purchase, with an initial option purchase price that exceeds two million dollars ($2,000,000), for the purpose of providing approximately 230,000 net square feet of office, warehouse, parking, and related facilities to consolidate the operations of state agencies in Long Beach. The acquisition of any real property by lease, lease-purchase, or lease with an option to purchase as provided in this subdivision shall be made in accordance with the bidding procedures described in subdivision (b) of Section 14669.

(b) The State Public Works Board may issue revenue bonds, negotiable notes, or negotiable bond anticipation notes pursuant to the State Building Construction Act of 1955 (Part 10b (commencing with Section 15800)) to finance the acquisition of the facilities authorized in subdivision (a). The board may borrow funds for project costs from the Pooled Money Investment Account pursuant to Sections 16312 and 16313.

(1) The amount of revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold shall equal the cost of acquisition,

including land, construction, preliminary plans, and working drawings, construction management and supervision, other costs relating to the design and construction of the facilities, exercise of any purchase option, and any additional sums necessary to pay interim and permanent financing costs. The additional amount may include interest and a reasonable required reserve fund.

(2) Authorized costs of the facilities, including land acquisition, preliminary plans, working drawings and construction shall not exceed seventy-five million dollars ($75,000,000).

(3) Notwithstanding Section 13332.11, the State Public Works Board may authorize the augmentation of the amount authorized pursuant to this subdivision by up to 10 percent of the amount specifically authorized.

(c) The net present value of the cost to acquire and operate the facilities authorized in subdivision (a) may not exceed the net present value of the cost to lease and operate an equivalent amount of office space, including the present facilities, over the same time period. In performing this analysis, interest rates, discount rates, and the consumer price index figures shall be obtained from the Treasurer.

(d) The Director of General Services may sell, lease, or exchange, based on current market value and upon any terms and conditions, and with any reservations and exceptions, deemed by the director to be in the state's best interest, the existing state office and parking facilities located at 245 West Broadway Street in the City of Long Beach. The net proceeds, if any, from the sale, lease, or exchange shall be applied toward any obligations undertaken by the director in securing consolidated facilities as authorized by this section.

(e) The director shall not enter into any agreement to acquire facilities, as specified in subdivision (a), any sooner than 45 days after notification, including the information specified in subdivision (c), to the Chairperson of the Joint Legislative Budget Committee.

CHAPTER 660

An act to amend Sections 8025 and 8027 of, and to add Section 8024.7 to, the Business and Professions Code, and to amend Section 2025 of the Code of Civil Procedure, relating to shorthand reporters.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 8024.7 is added to the Business and Professions Code, to read:

8024.7. The board shall establish an inactive category of licensure for persons who are not actively engaged in the practice of shorthand

reporting.

(a) The holder of an inactive license issued pursuant to this section shall not engage in any activity for which a license is required.

(b) An inactive license issued pursuant to this section shall be renewed during the same time period in which an active license is renewed. The holder of an inactive license is exempt from any continuing education requirement for renewal of an active license.

(c) The renewal fee for a license in an active status shall apply also for a renewal of a license in an inactive status, unless a lesser renewal fee is specified by the board.

(d) In order for the holder of an inactive license issued pursuant to this section to restore his or her license to an active status, the holder of an inactive license shall comply with both of the following:

(1) Pay the renewal fee.

(2) If the board requires completion of continuing education for renewal of an active license, complete continuing education equivalent to that required for renewal of an active license, unless a different requirement is specified by the board.

SEC. 2. Section 8025 of the Business and Professions Code is amended to read:

8025. A certificate issued under this chapter may be suspended or revoked, or certification may be denied, for one or more of the following causes:

(a) Conviction of a crime substantially related to the qualifications, functions and duties of a certified shorthand reporter. The record of conviction, or a certified copy thereof, shall be conclusive evidence of the conviction.

(b) Fraud or misrepresentation resorted to in obtaining a certificate hereunder.

(c) Fraud, dishonesty, corruption, willful violation of duty, gross negligence or incompetency in practice, or unprofessional conduct.

"Unprofessional conduct" includes, but is not limited to, acts contrary to professional standards concerning confidentiality; impartiality; filing and retention of notes; notifications, availability, delivery, execution and certification of transcripts; and any provision of law substantially related to the duties of a certified shorthand reporter.

(d) Repeated unexcused failure, whether or not willful, to transcribe notes of cases pending on appeal and to file the transcripts thereof within the time required by law or to transcribe or file notes of other proceedings within the time required by law or agreed by contract.

(e) Loss or destruction of stenographic notes, whether on paper or electronic media, which prevents the production of a transcript, due to negligence of the licensee.

(f) Violation of this chapter or the rules and regulations adopted by the board.

SEC. 3. Section 8025 of the Business and Professions Code is amended to read:

8025. A certificate issued under this chapter may be suspended or revoked, or certification may be denied, for one or more of the following causes:

(a) Conviction of a crime substantially related to the qualifications, functions and duties of a certified shorthand reporter. The record of conviction, or a certified copy thereof, shall be conclusive evidence of the conviction.

(b) Fraud or misrepresentation resorted to in obtaining a certificate hereunder.

(c) Fraud, dishonesty, corruption, willful violation of duty, gross negligence or incompetency in practice, or unprofessional conduct.

(1) "Unprofessional conduct" includes, but is not limited to, acts contrary to professional standards concerning confidentiality; impartiality; filing and retention of notes; notifications, availability, delivery, execution and certification of transcripts; and any provision of law substantially related to the duties of a certified shorthand reporter.

(2) The failure of a certified shorthand reporter to be impartial shall include, but not be limited to, any gift, fee waiver, or rebate provided to one or more parties to a lawsuit by a court reporter or a court reporting firm, but not to another party or parties thereto, if financially motivated or part of an ongoing mutually beneficial relationship, made under circumstances indicating an attitude of bias or favoritism.

(d) Repeated unexcused failure, whether or not willful, to transcribe notes of cases pending on appeal and to file the transcripts thereof within the time required by law or to transcribe or file notes of other proceedings within the time required by law or agreed by contract.

(e) Loss or destruction of stenographic notes, whether on paper or electronic media, which prevents the production of a transcript, due to negligence of the licensee.

(f) Violation of this chapter or the rules and regulations adopted by the board.

SEC. 4. Section 8027 of the Business and Professions Code, as amended by Chapter 26 of the Statutes of 1994, is amended to read:

8027. (a) As used in this section, "school" means a court reporter training program or an institution which provides a course of instruction approved by the board, and which is approved by the Council for Private Postsecondary and Vocational Education, is a public school in this state, or is accredited by the Western Association of Schools and Colleges.

(b) A court reporting school shall be primarily organized to train students for the practice of shorthand reporting, as defined in Sections 8016 and 8017. Its educational program shall be on the postsecondary or collegiate level, and shall be a residence program; its educational program shall not be a correspondence program. It shall be legally organized and authorized to conduct its program under all applicable laws of the state, and shall conform to and offer

the minimum prescribed course of study established by the board. Its records shall be kept and shall be maintained in a manner to render them safe from theft, fire, or other loss. The records shall indicate positive daily and clock-hour attendance of each student; apprenticeship and graduation reports; high school transcripts or equivalent; transcript of other education; and, student progress to date.

(c) Any school intending to offer a program in court reporting shall notify the board within 30 days of the date on which it provides notice to, or seeks approval from, the California Department of Education, the Council for Private Postsecondary and Vocational Education, the Chancellor's Office of the California Community Colleges, or the Western Association of Schools and Colleges, whichever is applicable. The board shall review the proposed curriculum and provide the school tentative approval, or notice of denial, within 60 days of receipt of the notice. The school shall apply for provisional recognition pursuant to subdivision (d) within no more than one year from the date it begins offering court reporting classes.

(d) The board may grant provisional recognition to a new court reporting school upon satisfactory evidence that it has met all of the provisions of subdivision (b) and this subdivision. Recognition may be granted by the board to a provisionally recognized school after it has been in continuous operation for a period of no less than three consecutive years from the date provisional recognition was granted, during which period the school shall provide satisfactory evidence that at least one person has successfully completed the entire course of study established by the board and complied with the provisions of Section 8020, and has been issued a certificate to practice shorthand reporting as defined in Sections 8016 and 8017. The board may, for good cause shown, extend the three-year provisional recognition period for not more than one year. Failure to meet the provisions and terms of this section shall require the board to deny recognition.

(e) Application for recognition of a court reporting school shall be made upon a form prescribed by the board and shall be accompanied by all evidence, statements, or documents requested. Each branch, extension center or off-campus facility requires separate application.

(f) All recognized and provisionally recognized court reporting schools shall notify the board of any change in school name, address, telephone number, responsible court reporting program manager, owner of private schools, and the effective date thereof, within 30 days of the change. The board shall be notified, immediately, of the discontinuance, or pending discontinuance of the school or program. All of these notifications shall be made in writing.

(g) The board shall maintain a roster of currently recognized and provisionally recognized court reporting schools including, but not limited to, the name, address, telephone number, and the name of the responsible court reporting program manager of each school.

(h) The board shall maintain statistics which display the number and passing percentage of all first-time examinees, including, but not limited to, those qualified by each recognized or provisionally recognized school and those first-time examinees qualified by other methods as defined in Section 8020.

(i) Inspections and investigations shall be conducted by the board as necessary to carry out this section.

(j) All recognized and provisionally recognized schools shall print in their school or course catalog the name, address, and telephone number of the board. At a minimum, the information shall be in 8-point bold type and include the following statement:

"IN ORDER FOR A PERSON TO QUALIFY FROM A SCHOOL TO TAKE THE STATE LICENSING EXAMINATION, THE PERSON SHALL COMPLETE A PROGRAM AT A RECOGNIZED SCHOOL. FOR INFORMATION CONCERNING THE MINIMUM REQUIREMENTS THAT A COURT REPORTING PROGRAM MUST MEET IN ORDER TO BE RECOGNIZED, CONTACT: THE COURT REPORTERS BOARD OF CALIFORNIA; (ADDRESS); (TELEPHONE NUMBER)."

(k) Each court reporting school shall file with the board, not later than June 30 of each year, a current school catalog which shows all course offerings and staff, and for private schools, the owner, except that where there have been no changes to the catalog within the previous year, no catalog need be sent. In addition, each school shall also file with the board a statement certifying that the school is in compliance with all statutes and the rules and regulations of the board, signed by the responsible court reporting program manager.

SEC. 5. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired,

a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audiotape or videotape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*).

(6) Any intention to reserve the right to use at trial a videotape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the videotape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party

giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or

opposes a motion to increase travel limits for party-deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well

as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a videotape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part,

the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion

of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties, or of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audiotape or videotape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audiotape or videotape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audiotape or videotape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audiotape or videotape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audiotape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audiotape.

(F) The oath shall be administered to the deponent on camera or on the audiotape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audiotape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audiotape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audiotape or videotape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audiotaped or videotaped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audiotaped or videotaped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The

original audiotape or videotape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a videotape or an audiotape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) On demand of any party or the deponent, the deposition officer shall suspend the taking of testimony to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audiotape or videotape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. Stenographic

notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audiotape or videotape shall promptly (1) permit that other party to hear the audiotape or to view the videotape, and (2) furnish a copy of the audiotape or videotape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audiotape or videotape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each such notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the

deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audiotape or videotape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) The deposition officer shall certify on the transcript of the deposition, or in the writing accompanying an audiotaped or videotaped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given and of any changes made by the deponent.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent),"

and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audiotape or videotape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audiotape or the videotape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audiotape or videotape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audiotape or videotape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined as a result of that person's designation to testify on behalf of an organization under subdivision (d).

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of

contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a videotape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the

Evidence Code.

SEC. 6. Section 3 of this bill incorporates amendments to Section 8025 of the Business and Professions Code proposed by both this bill and AB 3657. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 8025 of the Business and Professions Code, and (3) this bill is enacted after AB 3657, in which case Section 2 of this bill shall not become operative.

CHAPTER 661

An act to amend Sections 56365, 56366.1, and 56366.3 of, and to amend and repeal Section 56366.7 of, the Education Code, relating to special education.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 56365 of the Education Code is amended to read:

56365. (a) Nonpublic, nonsectarian school services, including services by nonpublic, nonsectarian agencies shall be available. These services shall be provided pursuant to Section 56366 under contract with the district, special education local plan area, or county office to provide the appropriate special educational facilities, special education, or designated instruction and services required by the individual with exceptional needs when no appropriate public education program is available.

(b) Pupils enrolled in nonpublic, nonsectarian schools and agencies under this section shall be deemed to be enrolled in public schools for all purposes of Chapter 4 (commencing with Section 41600) of Part 24 and Section 42238. The district, special education local plan area, or county office shall be eligible to receive allowances under Chapter 7 (commencing with Section 56700) for services that are provided to individuals with exceptional needs pursuant to the contract.

(c) If the state participates in the federal program of assistance for state operated or state supported programs for children with disabilities (P.L. 89-313, Sec. 6), pupils enrolled in nonpublic, nonsectarian schools shall be deemed to be enrolled in state supported institutions for all purposes of that program and shall be eligible to receive allowances under Chapter 7 (commencing with Section 56700) for supplemental services provided to individuals with exceptional needs pursuant to a contract with a district, special education local plan area, or county office of education. In order to participate in the federal program, the state must find that

participation will not result in any additional expenditures from the General Fund.

(d) The district, special education local plan area, or county office shall pay to the nonpublic, nonsectarian school or agency the full amount of the tuition for individuals with exceptional needs that are enrolled in programs provided by the nonpublic, nonsectarian school pursuant to the contract.

(e) Before contracting with a nonpublic, nonsectarian school or agency outside of this state, the district, special education local plan area, or county office shall document its efforts to utilize public schools or to locate an appropriate nonpublic, nonsectarian school or agency program, or both, within the state.

(f) If a district, special education local plan area, or county office places a pupil with a nonpublic, nonsectarian school or agency outside of this state, the pupil's individualized education program team shall submit a report to the superintendent within 15 days of the placement decision. The report shall include information about the special education and related services provided by the out-of-state program placement and the costs of the special education and related services provided, as specified in subdivisions (a) and (b) of Section 56741, and shall indicate the efforts of the local educational agency to locate an appropriate public school or nonpublic, nonsectarian school or agency, or a combination thereof, within the state. The superintendent shall submit a report to the State Board of Education on all placements made outside of this state.

(g) If a school district, special education local plan area, or county office of education decides to place a pupil with a nonpublic, nonsectarian school or agency outside of this state, that local education agency shall indicate the anticipated date for the return of the pupil to a public or nonpublic, nonsectarian school or agency placement, or a combination thereof, located in the state and shall document efforts during the previous placement year to return the pupil.

(h) In addition to meeting the requirements of Section 56366.1, a nonpublic, nonsectarian school or agency that operates a program outside of this state shall be certified or licensed by that state to provide, respectively, special education and related services and designated instruction and related services to pupils under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(i) A nonpublic, nonsectarian school or agency that is located outside of this state is eligible for certification pursuant to Section 56366.1 only if a pupil is enrolled in a program operated by that school or agency pursuant to the recommendation of an individualized education program team in California, and if that pupil's parents or guardians reside in California.

SEC. 2. Section 56366.1 of the Education Code is amended to read:

56366.1. (a) A nonpublic, nonsectarian school or agency that

seeks certification shall file an application with the superintendent on forms provided by the department and include the following information on the application:

(1) A description of the special education and designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian school certification.

(2) A description of the designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian agency certification.

(3) A list of appropriately qualified staff, a description of the credential, license, or registration that qualifies each staff member to render special education or designated instruction and services, and copies of their credentials, licenses, or certificates of registration with the appropriate state or national organization that has established standards for the service rendered.

(4) An annual operating budget.

(5) Affidavits and assurances necessary to comply with all applicable federal, state, and local laws and regulations which include criminal record summaries required of all nonpublic school or agency personnel having contact with minor children under Section 44237.

(b) Unless the board grants a waiver pursuant to Section 56101, a nonpublic, nonsectarian school or agency shall file an application for certification between January 1 and March 31, except as provided in paragraph (4) of subdivision (j).

(c) If the applicant operates a facility or program on more than one site, each site shall be certified.

(d) If the applicant is part of a larger program or facility on the same site, the superintendent shall consider the effect of the total program on the applicant. A copy of the policies and standards for the nonpublic, nonsectarian school or agency and the larger program shall be available to the superintendent.

(e) Prior to certification, the superintendent shall conduct an onsite review of the facility and program for which the applicant seeks certification. The superintendent may be assisted by representatives of the special education local plan area in which the applicant is located and a nonpublic, nonsectarian school or agency representative who does not have a conflict of interest with the applicant. The superintendent shall conduct an additional onsite review of the facility and program within four years of the certification effective date, unless the superintendent conditionally certifies the school or agency or unless the superintendent receives a formal complaint against the school or agency. In the latter two cases, the superintendent shall conduct an onsite review at least annually.

(f) The superintendent shall make a determination on an application within 120 days of receipt of the application and shall certify, conditionally certify, or deny certification to the applicant. If

the superintendent fails to take one of these actions within 120 days, the applicant is automatically granted conditional certification for a period terminating on August 31, of the current school year. If certification is denied, the superintendent shall provide reasons for the denial. The superintendent may certify the school or agency for a period of not longer than four years.

(g) Certification becomes effective on the date the nonpublic, nonsectarian school or agency meets all the application requirements and is approved by the superintendent. Certification may be retroactive if the school or agency met all the requirements of this section on the date the retroactive certification is effective. Certification expires on August 31 of the terminating year.

(h) The superintendent shall annually review the certification of each nonpublic, nonsectarian school and agency. For this purpose, a certified school or agency shall annually update its application between August 1 and October 31, unless the board grants a waiver pursuant to Section 56101. The superintendent may conduct an onsite review as part of the annual review.

(i) The superintendent may monitor a nonpublic, nonsectarian school or agency onsite at any time without prior notice when there is substantial reason to believe that there is an immediate danger to the health, safety, or welfare of a child. The superintendent shall document the concern and submit it to the nonpublic, nonsectarian school or agency at the time of the onsite monitoring. The superintendent shall require a written response to any noncompliance or deficiency found.

(j) (1) Notwithstanding any other provision of law, the superintendent may not certify a nonpublic, nonsectarian school or agency to do any of the following, unless the nonpublic, nonsectarian school or agency notifies the county superintendent of schools and the special education local plan area in which the proposed new or expanded nonpublic, nonsectarian school or agency is located of its intent to seek certification:

(A) Initiate or expand services to pupils currently educated, or pupils who were educated in the immediate prior fiscal year, in a juvenile court program or community school pursuant to Section 56150.

(B) Operate any other nonspecial education program, including independent study or adult school, or both.

(C) Operate a special education program previously provided by a district, special education local plan area, or county office, pursuant to Sections 56362 to 56364, inclusive.

(2) The notification shall occur no later than the December 1 prior to the new fiscal year in which the proposed or expanding school or agency intends to initiate services. The notice shall include the following:

(A) The specific date upon which the proposed nonpublic, nonsectarian school or agency is to be established.

(B) The location of the proposed program or facility.

(C) The number of pupils proposed for services, the number of pupils currently served in the juvenile court, community school, or other nonspecial education program, the current school services including special education and related services provided for these pupils, and the specific program of special education and related services to be provided under the proposed program.

(D) The reason for the proposed change in services.

(3) In addition to the requirements in subdivisions (a) through (e), inclusive, the superintendent shall require and consider the following in determining whether to certify a nonpublic, nonsectarian school or agency as described in this subdivision:

(A) A complete statement of the information required as part of the notice under paragraph (1).

(B) Documentation of the steps taken in preparation for the conversion to a nonpublic, nonsectarian school or agency, including information related to changes in the population to be served and the services to be provided pursuant to each pupil's individualized education program.

(4) Unless the board grants a waiver pursuant to Section 56101, a new or expanded nonpublic, nonsectarian school or agency shall file an application for certification between April 1 and June 30 of each year prior to the fiscal year. Before certifying the school or agency, the superintendent shall determine that certification of the new or expanding school or agency program is necessary for the provision of a free appropriate special education program to the affected pupils in the least restrictive environment.

(5) Notwithstanding any other provision of law, the certification becomes effective no earlier than July 1, if the school or agency provided the notification required pursuant to paragraph (1).

SEC. 3. Section 56366.3 of the Education Code is amended to read:

56366.3. (a) No contract for special education and related services provided by a nonpublic, nonsectarian school or agency shall be reimbursed by the state pursuant to Sections 56740 and 56775 if the contract covers special education and related services, administration, or supervision by an individual who was an employee of a contracting district, special education local plan area, or county office within the last 365 days, unless the contract contains an addendum establishing that the individual was involuntarily terminated or laid off as part of necessary staff reductions from the district, special education local plan area, or county office.

(b) This section does not apply to any person who is able to provide designated instruction and services during the extended school year because he or she is otherwise employed for up to 10 months of the school year by the district, special education local plan area, or county office.

SEC. 4. Section 56366.7 of the Education Code is amended to read:

56366.7. (a) As a condition of certification, a nonpublic,

nonsectarian school or agency shall submit, on forms developed by the superintendent in consultation with statewide organizations representing providers of special education and designated instruction and services, a list of uniform tuition fees for providing special education and designated instruction and services to individuals with exceptional needs who are served through contracts with local education agencies. The superintendent shall not certify, or shall decertify, any nonpublic, nonsectarian school or agency that has not complied with this section by June 30, 1996. The superintendent shall ensure that tuition fee information is uniformly collected from nonpublic, nonsectarian schools and agencies that seek certification each year.

(b) This section shall become inoperative on June 30, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 662

An act to amend Sections 12100, 12114, 12118, and 12121 of, and to add Article 3.5 (commencing with Section 1185) to Chapter 2 of Part 2 of Division 1 of, the Insurance Code, relating to insurance.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Article 3.5 (commencing with Section 1185) is added to Chapter 2 of Part 2 of Division 1 of the Insurance Code, to read:

Article 3.5. Disclosure of Material Transactions

1185. (a) Every domestic incorporated insurer shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless the acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes pursuant to other provisions of this code, laws, regulations, or other requirements.

(b) The report shall be filed within 15 days after the end of the calendar month in which any of the foregoing transactions occur.

(c) One complete copy of the report, including any exhibits or other attachments filed as part thereof, shall be filed with the department and the National Association of Insurance

Commissioners.

(d) All reports obtained by, or disclosed to the commissioner pursuant to this article, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer who would be affected thereby, notice and an opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in such manner as he or she may deem appropriate.

1186. (a) No acquisitions or dispositions of assets shall be reported pursuant to Section 1185 if the acquisitions or dispositions are not material. For purposes of this article, a material acquisition (or the aggregate of any series of related acquisitions during any 30-day period) or disposition (or the aggregate of any series of related dispositions during any 30-day period) is one that is nonrecurring and not in the ordinary course of business and involves more than 5 percent of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the insurance department of the insurer's state of domicile.

(b) Asset acquisitions subject to this article include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for that purpose. Asset dispositions also include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment (whether for the benefit of creditors or otherwise), abandonment, destruction, or other disposition.

(c) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

(1) Date of the transaction.

(2) Manner of acquisition or disposition.

(3) Description of the assets involved.

(4) Nature and amount of the consideration given or received.

(5) Purpose of, or reason for, the transaction.

(6) Manner by which the amount of consideration was determined.

(7) Gain or loss recognized or realized as a result of the transaction.

(8) Name of the person from whom the assets were acquired or to whom they were disposed.

(d) Insurers shall report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and that insurer ceded substantially

all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars ($1,000,000) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than 5 percent of the insurer's capital and surplus.

1187. (a) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements shall be reported pursuant to Section 1185 if the nonrenewals, cancellations, or revisions are not material. For purposes of this article, a material nonrenewal, cancellation, or revision is one that affects for property and casualty business, including accident and health business when written as such, more than 50 percent of an insurer's ceded written premium, or for life, annuity, and accident and health business, more than 50 percent of the total reserve credit taken for business ceded, on an annualized basis as indicated in the insurer's most recently filed statutory statement; provided, however, that no filing is required if the insurer's ceded written premium or the total reserve credit taken for business ceded represents, on an annualized basis, less than 10 percent of direct plus assumed written premium or 10 percent of the statutory reserve requirement prior to any cession, respectively.

(b) Subject to the criteria specified in subdivision (a), a report is to be filed without regard to which party has initiated the nonrenewal, cancellation, or revision of ceded reinsurance whenever one or more of the following conditions exist:

(1) The entire cession has been canceled, nonrenewed, or revised and ceded indemnity and loss adjustment expense reserves after any nonrenewal, cancellation, or revision represent less than 50 percent of the comparable reserves that would have been ceded had the nonrenewal, cancellation, or revision not occurred.

(2) An authorized or accredited reinsurer has been replaced on an existing cession by an unauthorized reinsurer.

(3) Collateral requirements previously established for unauthorized reinsurers have been reduced; for example, the requirement to collateralize incurred but not reported (IBNR) claim reserves has been waived with respect to one or more unauthorized reinsurers newly participating in an existing cession.

(4) Subject to the materiality criteria, for purposes of paragraphs (2) and (3), a report shall be filed if the result of the revision affects more than 10 percent of the cession.

(c) The following information is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

(1) Effective date of the nonrenewal, cancellation, or revision.

(2) The description of the transaction with an identification of the initiator thereof.

(3) Purpose of, or reason for, the transaction.

(4) If applicable, the identity of the replacement reinsurers.

(d) Insurers shall report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars ($1,000,000) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than 5 percent of the insurer's capital and surplus.

SEC. 2. Section 12100 of the Insurance Code is amended to read:

12100. As used in this article:

(a) (1) "Financial guaranty insurance" means a surety bond, insurance policy or, when issued by an insurer, an indemnity contract and any guaranty similar to the foregoing types, under which loss is payable upon proof of occurrence of financial loss to an insured claimant, obligee, or indemnitee as a result of any of the following events:

(A) Failure of any obligor on any debt instrument or other monetary obligation (including common or preferred stock guarantied under a surety bond, insurance policy, or indemnity contract) to pay when due principal, interest, premium, dividend, purchase price of or on the instrument or obligation, or other monetary payment when due when the failure is the result of a financial default or insolvency, regardless of whether the obligation is incurred directly or as guarantor by or on behalf of another obligor that has also defaulted.

(B) Changes in the levels of interest rates, whether short or long term, or the differential in interest rates between various markets or products.

(C) Changes in the rate of exchange of currency.

(D) Changes in the value of financial or commodity indices, or price levels in general.

(E) Other events that the commissioner determines by order, regulation, or written consent are substantially similar to any of the foregoing.

(2) Notwithstanding paragraph (1), "financial guaranty insurance" shall not include any of the following:

(A) Insurance of any loss resulting from any event described in paragraph (1), if the loss is payable only upon the occurrence of any of the following, as specified in a surety bond, insurance policy, or indemnity contract:

(i) A fortuitous physical event.

(ii) A failure of or deficiency in the operation of equipment.

(iii) An inability to extract or recover a natural resource.

(B) Surety insurance as authorized by Section 105.

(C) Credit unemployment insurance, meaning insurance on a debtor in connection with a specific loan or other credit transaction, to provide payments to a creditor in the event of unemployment of the debtor for the installments or other periodic payments becoming due while a debtor is unemployed.

(D) Credit insurance authorized by Section 113.

(E) Guaranteed investment contracts issued by life insurance companies which provide that the life insurer itself will make specified payments in exchange for specific premiums or contributions.

(F) Mortgage insurance authorized by Section 117.

(G) Mortgage guaranty insurance authorized by Section 119.

(H) Indemnity contracts or similar guaranties, to the extent that they are not otherwise limited or proscribed by this article, in which a life insurer does any of the following:

(i) Guaranties its obligations or indebtedness or the obligations or indebtedness of a subsidiary (as defined in Section 1215) other than a financial guaranty insurance corporation; provided that:

(I) To the extent that any such obligations or indebtedness are backed by specific assets, those assets shall at all times be owned by the life insurer or the subsidiary.

(II) In the case of the guaranty of the obligations or indebtedness of the subsidiary that are not backed by specific assets of the life insurer, the guaranty terminates once the subsidiary ceases to be a subsidiary.

(ii) Guaranties obligations or indebtedness (including the obligation to substitute assets where appropriate) with respect to specific assets acquired by a life insurer in the course of normal investment activities and not for the purpose of resale with credit enhancement, or guaranties obligations or indebtedness acquired by its subsidiary, provided that the assets acquired pursuant to this clause have been either of the following:

(I) Acquired by a special purpose entity, whose sole purpose is to acquire specific assets of the life insurer or the subsidiary and issue securities or participation certificates backed by the assets.

(II) Sold to an independent third party.

(iii) Guaranties obligations or indebtedness of an employee or agent of the life insurer.

(I) Any cramdown bond or mortgage repurchase bond, as those phrases are used by nationally recognized rating agencies in respect of mortgage backed securities.

(J) Residual value insurance.

(K) Any other form of insurance covering risks that the commissioner determines by order, regulation, or written consent to be substantially similar to any of the foregoing.

(b) "Affiliate" means a person that, directly or indirectly, owns at least 10 but less than 25 percent of the financial guaranty insurance corporation or that is at least 10 percent but less than 25 percent, directly or indirectly, owned by a financial guaranty insurance

corporation.

(c) "Asset-backed securities" means securities of an issuer provided that both of the following apply:

(1) The issuer of the securities is a special purpose corporation, trust, or other entity, or, provided that the securities constitute an insurable risk, is a bank, trust company, or other financial institution, deposits in which are insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation or any successors thereto.

(2) The securities are related to a pool of assets so that all of the following apply:

(A) The pool of assets has been conveyed, pledged, or otherwise transferred to or is otherwise owned or acquired by the issuer.

(B) The pool of assets backs the securities issued.

(C) No asset in the pool has a value exceeding 20 percent of the aggregate value of the pool.

(d) "Average annual debt service" means the amount of insured unpaid principal and interest on an obligation multiplied by the number of the insured obligations (assuming that each obligation represents a $1,000 par value), divided by the amount equal to the aggregate life of all of those obligations. This definition, expressed as a formula in regard to bonds, is as follows:

$$\text{Average Annual Debt Service} = \frac{\text{Total Debt Service} \times \text{Number of Bonds}}{\text{Bond Years}}$$

$$\text{Total Debt Service} = \text{Insured Unpaid Principal} + \text{Interest}$$

$$\text{Number of Bonds} = \frac{\text{Total Insured Principal}}{\$1{,}000}$$

$$\text{Bond Years} = \text{Number of Bonds} \times \text{Term in Years}$$

(e) "Collateral" means any of the following:

(1) Cash.

(2) The scheduled cash flow from obligations which are not callable, where the underlying obligations cannot be prepaid in whole or in part by the original borrowers, and the principal of which are directly payable or guaranteed by the United States government, or in the case of obligations denominated in the currency of a foreign country directly payable or guaranteed by the government or central bank of that country, scheduled to be received on or prior to the date of scheduled debt service on the insured obligation.

(3) The market value of investment grade obligations, other than obligations evidencing an interest in the project or projects financed with the proceeds of the insured obligations, in an amount not to exceed the principal of and interest on the insured obligation.

(4) The face amount of each letter of credit that meets all of the

following criteria:

(A) Is irrevocable.

(B) Provides for payment under the letter of credit under all instances in which payment under a financial guaranty insurance policy is required.

(C) Is issued, presentable, and payable either:

(i) At an office of the letter of credit issuer in the United States.

(ii) At an office of the letter of credit issuer located in the jurisdiction in which the trustee or paying agent for the insured obligation is located.

(D) Contains a statement that either:

(i) Identifies the financial guaranty insurance corporation, its collateral agent, or any successor by operation of law, including any liquidator, rehabilitator, receiver or conservator, as the beneficiary.

(ii) Identifies the trustee or the paying agent for the insured obligation as the beneficiary.

(E) Contains a statement to the effect that the obligation of the letter of credit issuer under the letter of credit is an individual obligation of that issuer and is in no way contingent upon reimbursement with respect thereto.

(F) Contains an issue date and an expiration date.

(G) Either:

(i) Has a term at least as long as the shorter of the term of the insured obligation or the term of the financial guaranty insurance policy; or

(ii) Provides that the letter of credit shall not expire without 30 days prior written notice to the beneficiary and allows for drawing under the letter of credit in the event that, prior to expiration, the letter of credit is not renewed or extended or a substitute letter of credit or alternate collateral meeting the requirements of subdivision (e) is not provided.

(H) If the letter of credit is governed by the 1983 revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), or any successor revision approved by the commissioner, it shall contain a provision for an extension of time, of not less than 30 days after resumption of business, to draw against the letter of credit in the event that one or more of the occurrences described in Article 19 of Publication 400 occurs.

(I) Is issued by a bank, trust company, or savings association that meets all of the following criteria:

(i) Is organized and existing under the laws of the United States or any state thereof or, in the case of a banking organization organized under the laws of a foreign country, has a branch or agency office licensed under the laws of the United States or any state thereof and is domiciled in a member country of the Organization of Economic Cooperation and Development having a sovereign rating in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the commissioner.

(ii) Has (or is the principal operating subsidiary of a bank holding company that has) a long-term debt rating of at least investment grade.

(iii) Is not a parent, subsidiary or affiliate of the trustee or paying agent, if any, with respect to the insured obligation if that trustee or paying agent is the named beneficiary of the letter of credit.

Collateral shall be deposited with or held by the financial guaranty insurance corporation, held by a trustee or agent for the benefit of the financial guaranty insurance corporation in trust or to perfect a security interest, or held in trust pursuant to the bond indenture or other trust arrangement by a trustee for the benefit of holders of the insured obligations which may be used for the payment of debt service, other insured payments, collateral agent fees and trustee fees or reimbursement of the financial guaranty insurance corporation on any obligation insured by the corporation. Any such trustee or agent shall be a bank, savings association, depository institution, or other entity acceptable to the commissioner, the deposits of which are insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation (or any successors thereto), or in the case of banking organizations organized under the laws of a foreign country in addition satisfies the requirements of clauses (i) and (ii) of subparagraph (I) of paragraph (4) of subdivision (e) of Section 12100, and, in each case which has a net worth of at least twenty-five million dollars ($25,000,000). Any such trustee or agent may also be an approved or qualified servicer or originator of the kind of assets which comprise the collateral which maintains in force at all times errors and omissions insurance applicable to the trust or agency activities, including without limitation, a servicer qualified under a federal or state insurance or guaranty program to service loans or mortgage loans.

(f) "Commercial real estate" means income-producing real property other than residential property consisting of less than five units.

(g) "Contingency reserve" means an additional liability reserve established to protect policyholders against the effects of adverse economic cycles or other unforeseen circumstances.

(h) "Financial guaranty insurance corporation" means an insurer transacting financial guaranty insurance.

(i) "Governmental unit" means a state, territory, or possession of the United States of America, the District of Columbia, the country of Canada, a province of Canada, the United Kingdom, a public authority of the United Kingdom, a municipality, or a political subdivision of any of the foregoing, or any public agency or instrumentality thereof.

(j) "Guaranties of consumer debt obligations" means insurance policies indemnifying regulated financial institutions against loss or damage resulting from nonpayment of debts owed to them for extensions of credit to individuals for nonbusiness purposes provided

in the normal course of their business. Policies providing that coverage shall contain a provision that all liability terminates upon sale or transfer of the underlying obligation to any transferee that is not an insured of the financial guaranty insurance corporation under a similar policy.

(k) "Industrial development bond" means any security, or other instrument under which a payment obligation is created, issued by or on behalf of a governmental unit to finance a project serving a private industrial, commercial, or manufacturing purpose and not guarantied by a governmental unit.

(*l*) "Insurable risk" means that the obligation on an uninsured basis has been determined to be not less than investment grade. With respect to asset-backed securities as defined in subdivision (c), the determination shall be, based solely on the pool of assets pledged in support of the insured obligation or securing the financial guaranty insurance corporation, without consideration of the creditworthiness of the issuer.

(m) "Investment grade" means that the obligation is rated in one of the top four generic lettered rating classifications by a securities rating agency acceptable to the commissioner, that the obligation, without regard to financial guaranty insurance, has been identified in writing by that rating agency as an insurable risk deemed to be of investment grade quality or that the obligation has been determined to be investment grade (as indicated by a category 1 or 2 rating) by the Securities Valuation Office of the National Association of Insurance Commissioners.

(n) "Municipal bonds" means municipal obligation bonds and special revenue bonds.

(o) "Municipal obligation bond" means any security, or other instrument, including a state lease but not a lease of any other governmental unit, under which a payment obligation is created, issued by or on behalf of a governmental unit to finance a project or undertaking serving a substantial public purpose, and which is one or more of the following:

(1) Payable from tax revenues, but not tax allocations, within the jurisdiction of the governmental unit.

(2) Payable or guarantied by the United States of America or any agency, department or instrumentality thereof, or by a state housing agency.

(3) Payable from rates or charges (but not tolls) levied or collected in respect of a nonnuclear utility project, public transportation facility (other than an airport facility) or public higher education facility.

(4) With respect to lease obligations, payable from past, present, or future appropriations.

(p) "Reinsurance" means cessions qualifying for credit under Section 12121.

(q) "Security" or "secured" means any of the following:

(1) A deposit at least equal to the full amount of the outstanding

principal of the insured obligation.

(2) Collateral, as defined by subdivision (e), at least equal to the full amount of the outstanding principal of the insured obligation or that has a market value or scheduled cash flow which is equal to or greater than the scheduled debt service on the insured obligation.

(3) Property, provided the financial guaranty insurance corporation or the trustee has possession of evidence of the right, title, or authority to claim or foreclose thereon or otherwise dispose of the property for value, the scheduled cash flow from which, or market value thereof, is at least equal to the scheduled debt service on the insured obligation.

(r) "Special revenue bond" means any security or other instrument under which a payment obligation is created, issued by or on behalf of a governmental unit to finance a project or undertaking serving a substantial public purpose and not payable from the sources enumerated in subdivision (o) or securities which are substantially similar to the foregoing issued by a not-for-profit corporation.

(s) "Total net liability" of a financial guaranty insurance corporation means the aggregate amount of insured unpaid principal, interest, and other monetary payments, if any, of guarantied obligations insured or assumed, less reinsurance and less collateral.

(t) "Utility first mortgage obligation" means an obligation of an issuer secured by a first priority mortgage on property owned or leased by an investor-owned or cooperative-owned utility company.

SEC. 3. Section 12114 of the Insurance Code is amended to read:

12114. (a) At least 95 percent of a financial guaranty insurance corporation's outstanding total net liability on the kinds of obligations enumerated in paragraph (1) of subdivision (b) of Section 12112 shall be investment grade.

(b) The financial guaranty insurance corporation shall at all times maintain capital, surplus, and contingency reserve in the aggregate no less than the sum of the following:

(1) 0.3333 percent of the total net liability under guaranties of municipal bonds and utility first mortgage obligations.

(2) 0.6666 percent of the total net liability under guaranties of investment grade asset-backed securities.

(3) 1.0 percent of the total net liability under guaranties, secured by collateral or having a term of seven years or less of:

(A) Investment grade industrial development bonds, and

(B) Other investment grade obligations.

(4) 1.5 percent of the total net liability under guaranties of other investment grade obligations.

(5) 2.0 percent of the total net liability under guaranties of:

(A) Noninvestment grade consumer debt obligations, and

(B) Noninvestment grade asset-backed securities.

(6) 3.0 percent of the total net liability under guaranties of noninvestment grade obligations secured by first mortgages on

commercial real estate and having loan-to-value ratios of 80 percent or less.

(7) 5.0 percent of the total net liability under guaranties of other noninvestment grade obligations.

(8) If the amount of collateral required by paragraph (3) of subdivision (b) is no longer maintained, that proportion of the obligation insured which is not so collateralized shall be subject to the aggregate limits specified in paragraph (4) of subdivision (b).

(9) Additional surplus determined by the commissioner to be adequate to support the writing of surety insurance if the financial guaranty insurance corporation has been admitted to transact surety insurance as authorized by subdivision (a) of Section 12102.

SEC. 4. Section 12118 of the Insurance Code is amended to read:

12118. An admitted insurer transacting financial guaranty insurance in this state but which is not admitted to transact, financial guaranty insurance in this state shall be subject to all the provisions of this article and:

(a) May continue to write financial guaranties of the type authorized by subdivision (b) of Section 12112 as follows:

(1) For a period not to exceed five years from January 1, 1991, provided that by July 1, 1991, application shall be made to the commissioner to organize or admit a financial guaranty insurance corporation, controlled by or under common control with that insurer, which financial guaranty insurance corporation, once admitted, shall immediately assume all of the financial guaranty insurance in force on the books of the insurer which was written on or after January 1, 1991.

(2) In the case of an insurer transacting only financial guaranty insurance prior to January 1, 1991, which would comply with all of the requirements for admission as a financial guaranty insurance corporation under this article and which has made application, and has paid the filing fee of five thousand dollars ($5,000) required by Section 12105 to amend its current certificate of authority to financial guaranty insurance by no later than March 1, 1991, the insurer may continue to write financial guaranty insurance until the time that the commissioner issues or denies the amended certificate of authority or the application is otherwise terminated.

(b) Shall, if it does not make application for an amended certificate of authority to transact the business of financial guaranty insurance pursuant to paragraph (1) of subdivision (a), cease writing any new financial guaranty insurance by no later than July 1, 1991. An insurer subject to this paragraph may do one or more of the following:

(1) Reinsure its net in-force business with an admitted financial guaranty insurance corporation.

(2) Subject to the prior approval of its domiciliary commissioner and the commissioner of this state, reinsure all or part of its net in-force business with an insurer meeting the requirements of subdivision (b) of Section 12121, except that, in the case of an

admitted surety insurer or a nonadmitted insurer that transacts financial guaranty insurance and insurance other than financial guaranty insurance, the insurer's combined capital and surplus shall be at least one hundred million dollars ($100,000,000) and subparagraphs (A) to (F), inclusive, of paragraph (3) of subdivision (b) of Section 12121 shall not be applicable. The assuming insurer shall maintain reserves for the reinsured business in the manner applicable to the ceding insurer under paragraph (2) of subdivision (a) of Section 12121.

(3) Thereafter continue the risks then in force and, with 30 days prior written notice to its domiciliary commissioner, write new financial guaranty policies provided the writing of the policies is reasonably prudent to mitigate either the amount of or possibility of loss in connection with business written prior to January 1, 1991. However, an insurer shall receive the prior approval of its domiciliary commissioner and the commissioner of this state before writing any new financial guaranty insurance policies that would have the effect of increasing its risk of loss.

(c) Shall, for all guaranties in force prior to January 1, 1991, including those that fall under the definition of financial guaranty insurance contained in subdivision (a) of Section 12100, be subject to the contingency reserve, reserves for loss and loss adjustment expenses, and unearned premium reserve requirements applicable for municipal bond insurance policies which were in effect prior to July 1, 1989, or January 1, 1991, as appropriate. To the extent that the insurer's contingency reserves maintained as of the effective date of this article are less than those required under paragraph (1) of subdivision (b) of Section 12108, the insurer shall have until January 1, 1994, to bring its reserves into compliance, except that a part of the reserve may be released proportional to the reduction in net total liabilities resulting from reinsurance, provided that the reinsurer shall, on the effective date of the reinsurance, establish a reserve in an amount equal to the amount released and, in addition, a part of the reserve may be released with the approval of the commissioner upon demonstration that the amount carried is excessive in relation to the corporation's outstanding obligations.

(d) Shall be subject to the reserve requirements applicable to financial guaranty insurance corporations, for business transacted on or after January 1, 1991.

SEC. 5. Section 12121 of the Insurance Code, added by Chapter 1032 of the Statutes of 1990, is amended to read:

12121. (a) For financial guaranty insurance that takes effect on or after January 1, 1991, an insurer authorized to transact financial guaranty insurance shall receive credit for reinsurance as an asset or as a reduction from liabilities only if the reinsurance is placed with a reinsurer as provided in subdivision (b), and if the reinsurance agreement may be terminated or amended only if one or more of the following applies:

(1) At the option of the reinsurer or the ceding insurer if the

reinsurance agreement provides that the liability of the reinsurer with respect to policies in effect at the date of termination shall continue until the expiration or cancellation of each such policy.

(2) With the consent of the ceding company, if the reinsurance agreement provides for a cutoff of the reinsurance in force as of the date of termination.

(3) At the discretion of the commissioner acting as rehabilitator, liquidator, or receiver of the ceding or assuming insurer.

(b) Reinsurance may be placed with one of the following:

(1) Another financial guaranty insurance corporation admitted pursuant to this article to transact financial guaranty insurance which may be under common control with the ceding financial guaranty insurer or financial guaranty corporation, but which does not own, and is not owned by, in whole or in part, directly or indirectly, the ceding financial guaranty insurer or financial guaranty insurance corporation.

(2) Another financial guaranty insurance corporation admitted pursuant to this article which does own, or is owned by, in whole or in part, directly or indirectly, the ceding financial guaranty insurer or financial guaranty insurance corporation provided that (A) the value of the ownership interest in either case does not exceed the greater of (i) 35 percent of its combined capital and surplus or (ii) 50 percent of the excess of its surplus over its liabilities and capital and (B) the financial guaranty insurance corporation providing the reinsurance is rated at the time of cession and thereafter in one of the two top generic rating classifications by a securities rating agency acceptable to the commissioner.

(3) An insurer admitted to transact surety insurance but not financial guaranty insurance pursuant to this article, if the insurer meets all of the following criteria:

(A) Has and maintains combined capital and surplus of at least fifty million dollars ($50,000,000).

(B) Establishes and maintains the reserves required in Sections 12108, 12109, and 12110, except that if the reinsurance agreement is not pro rata the contribution to the contingency reserve shall be equal to 50 percent of the quarterly earned insurance premium.

(C) Complies with the provisions of subdivision (b) of Section 12114, except that its maximum aggregate assumed total net liability shall be one-half that permitted for a financial guaranty insurance corporation. For the purpose of determining compliance with this clause, the assuming reinsurer, unless at the time of cession and thereafter it is rated in one of the two top generic rating classifications by a securities rating agency acceptable to the commissioner, shall be limited to using 10 percent of its capital and surplus in making this calculation.

(D) Complies with the provisions of Section 12115.

(E) If the insurer is an affiliate, parent, or subsidiary of the financial guaranty insurance corporation, the affiliate, parent, or subsidiary shall not assume a percentage of the corporation's total

liability in excess of its percentage of equity interest in the corporation.

(F) Assumes, together with all other reinsurers subject to this paragraph, less than 50 percent of the total liability for all its business after deducting any reinsurance placed with another financial guaranty insurance corporation.

(4) A nonadmitted insurer transacting only financial guaranty insurance as is or would be permitted by this article and that otherwise complies with the provisions of subparagraphs (A), (E), and (F) of paragraph (3), and otherwise complies with paragraph (1) or (2), and in compliance with the requirements of subdivision (b) of Section 922.4 or subdivision (a) of Section 922.5, as applicable.

(5) A nonadmitted insurer not transacting only financial guaranty insurance as is or would be permitted by this article and that complies with the provisions of subparagraphs (A), (C), (E), and (F) of paragraph (3) in an amount not exceeding the liabilities carried by the ceding financial guaranty insurance corporation and in compliance with the requirements of subdivision (b) or (c) of Section 922.4 or subdivision (a) or (c) of Section 922.5, as applicable.

(c) In determining whether the financial guaranty insurance corporation meets the limitations imposed by Section 12115, in addition to credit for other types of qualifying reinsurance, the financial guaranty insurance corporation's aggregate risk may be reduced to the extent of the limit for aggregate reinsurance but, in no event, in an amount greater than the amount of the aggregate risk that will become due during the unexpired term of the reinsurance agreement in excess of the financial guaranty insurance corporation's retention pursuant to the reinsurance agreement.

CHAPTER 663

An act to amend Sections 362.1, 366, 16002, and 16501.1 of, and to add Section 11461.5 to, the Welfare and Institutions Code, relating to foster care.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 362.1 of the Welfare and Institutions Code is amended to read:

362.1. In order to maintain ties between the parent or guardian and any siblings and the minor, and to provide information relevant to deciding if, and when, to return a minor to the custody of his or her parent or guardian, or to encourage or suspend sibling interaction, any order placing a minor in foster care, and ordering reunification services, shall provide as follows:

(a) For visitation between the parent or guardian and the minor. Visitation shall be as frequent as possible, consistent with the well-being of the minor.

(b) For visitation between the minor and any siblings, or for the suspension of interaction between the minor and any siblings, pursuant to subdivision (b) of Section 16002, if the court notes in the order the reasons for its determination that sibling interaction is detrimental to the minor.

SEC. 2. Section 366 of the Welfare and Institutions Code is amended to read:

366. (a) The status of every dependent child in foster care shall be reviewed periodically as determined by the court but no less frequently than once every six months, as calculated from the date of the original dispositional hearing, until the hearing described in Section 366.25 or 366.26 is completed. The court shall determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, the continuing need to suspend sibling interaction, if applicable, pursuant to subdivision (c) of Section 16002, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and shall project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship.

(b) Subsequent to the hearing periodic reviews of each child in foster care shall be conducted pursuant to the requirements of Sections 366.3 and 16503.

SEC. 3. Section 11461.5 is added to the Welfare and Institutions Code, to read:

11461.5. (a) The department may establish a rate to supplement the basic rate specified in subdivision (a) of Section 11461 for the provision of additional shelter needs for AFDC-FC children who are placed in out-of-home care with their siblings.

(b) The department shall develop regulations for the rate specified in subdivision (a).

(c) The department shall amend the state plan to receive appropriate funding from the federal government, for implementation of this section, under Title IV-E of the federal Social Security Act, Part E (commencing with Section 670) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code. The plan amendment shall be submitted within 90 days of notification that federal funds are available for the purposes of this section.

(d) Subdivisions (a) and (b) shall be implemented only if, and upon the date that, the director executes a declaration, that shall be retained by the director, stating that the director has determined that the federal government has approved the state plan amendments required by subdivision (c), and federal funding in accordance with those state plan amendments becomes available.

SEC. 4. Section 16002 of the Welfare and Institutions Code is amended to read:

16002. (a) It is the intent of the Legislature to maintain the

continuity of the family unit, and ensure the preservation and strengthening of the minor's family ties by ensuring that when siblings have been removed from their home, either as a group on one occurrence or individually on separate occurrences, the siblings will be placed in foster care together, unless it has been determined that placement together is not in the best interest of one or more siblings. The Legislature recognizes that in order to ensure the placement of a sibling group in the same foster care placement, placement resources need to be expanded.

(b) The responsible local agency shall make a diligent effort in all out-of-home placements of dependent children, including those with relatives, to maintain sibling togetherness and contact. When maintaining sibling togetherness is not possible, diligent effort shall be made, and a case plan prepared, to provide for ongoing and frequent interaction among siblings until family reunification is achieved, or, if parental rights are terminated, as part of developing the permanent plan for the child. If the court determines by a preponderance of the evidence that sibling interaction is detrimental to a child or children, the reasons for the determination shall be noted in the court order, and interaction shall be suspended.

(c) When there has been a judicial suspension of sibling interaction, the reasons for the suspension shall be reviewed at each periodic review hearing pursuant to Section 366. When the court determines that sibling interaction can be safely resumed, that determination shall be noted in the court order and the case plan shall be revised to provide for sibling interaction.

(d) If the case plan for the minor has provisions for sibling interaction, the minor, or his or her parent or legal guardian shall have the right to comment on those provisions.

(e) By February 1, 1995, the State Department of Social Services shall conduct a study, including the review of existing licensing laws and regulations, to identify barriers that limit the placement resources available for sibling groups and to develop solutions to those barriers. The study shall include exploring the feasibility of providing incentives to foster parents to ensure their availability to accept sibling groups, and providing support services to foster parents and relatives that would enable them to accept sibling groups. The study shall also explore appropriate alternatives to placement of siblings.

(f) For the purpose of placement and visitation "sibling" is defined as sister, brother, half-sister, half-brother, or as appropriate, stepsister or stepbrother.

(g) The court documentation on sibling placements required under this section shall not require the modification of existing court order forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

SEC. 5. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) The Legislature finds and declares that the

foundation and central unifying tool in child welfare services is the case plan.

(b) The Legislature further finds and declares that a case plan ensures that the child receives protection and proper case management, and that services are provided to the parents or other caretakers as appropriate. A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(c) When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of the least restrictive or most familylike setting, selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.25 or 366.26, but no less frequently than once every six months.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances which required child welfare services intervention.

(2) The case plan shall identify specific goals, and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents which led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services.

(5) When out-of-home services are used, the frequency of contact

between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(6) When out-of-home placement is made, the case plan shall include documentation of the provisions specified in subdivisions (b), (c), and (d) of Section 16002.

(7) When out-of-home services are used, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(8) Parents and legal guardians shall have an opportunity to review the case plan, sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(9) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the probation officer's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(h) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become

operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 664

An act to amend Section 99268.17 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 99268.17 of the Public Utilities Code is amended to read:

99268.17. (a) Notwithstanding subdivision (a) of Section 99247, liability and casualty insurance premiums and payments in settlement of claims arising out of the operator's liability are excluded from operating costs.

(b) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

CHAPTER 665

An act to amend Sections 14005.21, 14105.336, 14132.44, and 14132.47 of the Welfare and Institutions Code, relating to public social services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 14005.21 of the Welfare and Institutions Code is amended to read:

14005.21. (a) Any medically needy aged, blind, or disabled person who was categorically needy under this chapter on the basis of eligibility under Chapter 3 (commencing with Section 12000) or Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code for the month of August 1993, and was discontinued as of September 1, 1993, and who, but for the addition of Section 12200.015, would be eligible to receive benefits without a share of cost in September 1993 under this chapter, shall remain eligible to receive benefits without a share of cost under this chapter as if that person were categorically needy as long as he or she meets

other applicable requirements.

(b) Any medically needy aged, blind, or disabled person who was eligible for benefits under this chapter as categorically needy or medically needy under subdivision (a) for the month of August 1994, shall not be responsible for paying his or her share of cost if he or she had that eligibility for benefits without a share of cost interrupted or terminated by the addition of Section 12200.017, and if he or she, but for Section 12200.017, would be eligible to continue receiving benefits under this chapter without a share of cost.

(c) The department shall implement this section regardless of the availability of federal financial participation for the share of cost paid from state funds pursuant to subdivisions (a) and (b).

SEC. 2. Section 14105.336 of the Welfare and Institutions Code is amended to read:

14105.336. The department shall reduce reimbursements to pharmacists by fifty cents ($0.50) per prescription, effective January 1, 1995, for all drug prescription claims reimbursed through the Medi-Cal program.

SEC. 3. Section 14132.44 of the Welfare and Institutions Code is amended to read:

14132.44. (a) Targeted case management (TCM), pursuant to Section 1915(g) of the Social Security Act as amended by Public Law 99-272 (42 U.S.C. Sec. 1396n(g)), shall be covered as a benefit if the TCM provider providing the TCM services does so pursuant to a contract with a participating local governmental agency under the Medi-Cal Administrative Claiming process pursuant to Section 14132.47. TCM services shall be, subject to utilization controls for persons in programs determined appropriate by the director. Nothing in this section or in Section 14132.47 shall be construed to require any local governmental agency to implement TCM.

(b) A TCM service provider under contract to a participating local governmental agency may provide TCM services to one or all of the following groups of Medi-Cal beneficiaries:

(1) High-risk children, youth, and families.
(2) Pregnant, postpartum, and parenting women.
(3) Persons with human immunodeficiency virus infection.
(4) Homeless persons.
(5) Persons abusing alcohol or drugs, or both.
(6) Persons known to use multiple service providers.
(7) Persons with catastrophic or chronic illnesses.
(8) Elderly persons at risk of institutionalization.
(9) Adults at risk of abuse or neglect.

(c) A participating local governmental agency that elects to contract with a TCM provider for the provision of TCM services to the groups specified in subdivision (b) shall, for each fiscal year, for the purpose of obtaining federal medicaid matching funds, certify to the department all of the following:

(1) The availability and expenditure of 100 percent of the nonfederal share for the provision of TCM services.

(2) The amount of funds expended on allowable TCM services.

(3) Its expenditures represent costs that are eligible for federal financial participation.

The department shall deny any claim if it determines that any certification required by this subdivision is not adequately supported for purposes of federal financial participation.

(d) Only a participating local governmental agency may submit TCM service claims to the department for TCM services performed by a TCM provider pursuant to a contract with the participating local governmental agency. The department shall deny any claims for TCM services performed by a TCM provider unless the TCM provider only performs those services pursuant to its contract with that participating local governmental agency and the claims are submitted by that agency.

(e) Upon federal approval for federal financial participation, the department, in consultation with counties, and consistent with federal regulations including the State Medicaid Manual of the Department of Health and Human Services, Health Care Financing Administration, shall define TCM services, shall establish the standards under which TCM services qualify as a Medi-Cal reimbursable service, shall develop an appropriate rate of reimbursement, and shall develop a claiming system to certify local matching expenditures.

(f) (1) Notwithstanding any other provision of this section or of Section 14132.47, the state shall be held harmless, in accordance with paragraphs (2), (3), and (4), from any final federal audit disallowance and interest resulting from payments made by the federal medicaid program to a participating local governmental agency for TCM services provided by a TCM provider pursuant to this section.

(2) Each participating local governmental agency that has received payments under this section shall be liable for the same proportion of the disallowance and interest as the participating local governmental agency's paid claims pursuant to this section less its contribution pursuant to subdivision (m) of Section 14132.47, both in the fiscal year to which the disallowance pertains, bears to the particular participating local governmental agency's total claims pursuant to this section and Section 14132.47 in that same fiscal year.

(3) Each participating local governmental agency that has received payments under this section shall be liable for any final federal audit disallowance and interest only with respect to the payments made to that participating local governmental agency. In the event that the department is required or obligated to reimburse the federal medicaid program for a final federal audit disallowance and interest resulting from payments made to a participating local governmental agency for TCM services provided by a TCM provider pursuant to this section, the department shall recoup from that particular participating local governmental agency the same proportion of the disallowance and interest as the participating local

governmental agency's paid claims pursuant to this section less its contribution pursuant to subdivision (m) of Section 14132.47, both in the fiscal year to which the disallowance pertains, bears to the particular participating local governmental agency's total claims pursuant to this section and Section 14132.47 in that same fiscal year.

(4) Notwithstanding paragraphs (2) and (3), to the extent that a final federal audit disallowance and interest results from a claim or claims for which the participating local governmental agency has received reimbursement for TCM services performed by a nongovernmental entity under contract with, and on behalf of, the participating local governmental agency, the department shall be held harmless by that particular participating local governmental agency for 100 percent of the amount of any such final federal audit disallowance and interest.

(g) The use of local matching funds allowed by this section shall not create, lead to, or expand the health care funding obligations or service obligations for current or future years for each participating local governmental agency, except as required by this section or as may be required by federal law.

(h) TCM services are services which assist clients to gain access to needed medical, social, educational, and other services. Activities conducted by TCM providers may include, but are not limited to, all of the following:

(1) Assessment of client needs and personal support systems.

(2) Development of comprehensive individualized service plans.

(3) Coordination of services required to implement the individualized service plan.

(4) Referral services.

(5) Client monitoring to assess the efficacy of the plan.

(6) Advocacy for clients with service providers.

(7) Reevaluation and adaptation of the individualized service plan as necessary.

(i) Each participating local governmental agency may only submit to the department TCM service claims performed by a TCM service provider if that provider is under contract with a participating local governmental agency that is claiming through the Medi-Cal Administrative Claiming process pursuant to Section 14132.47 and the TCM provider has an ongoing and continuous relationship with the Medi-Cal beneficiary receiving the TCM service in a manner consistent with continuity of care, pursuant to standards established by the Director of Health Services.

(j) For the purposes of this section "participating local governmental agency" means a county or chartered city under contract with the department pursuant to Section 14132.47.

(k) For the purposes of this section a "TCM provider" means an entity or person that is not affiliated with or employed by a participating local governmental agency, but provides TCM services on behalf of a local governmental agency in accordance with a contract.

(*l*) The requirements of subdivision (m) of Section 14132.47 shall not apply to claims for TCM services provided by a local educational agency under a contract with a participating local governmental agency.

(m) Amendments to this section enacted during the 1994 calendar year shall be applicable to services rendered, and to moneys paid to participating local governmental agencies for those services, in the 1994–95 fiscal year and thereafter.

SEC. 4. Section 14132.47 of the Welfare and Institutions Code is amended to read:

14132.47. (a) (1) It is the intent of the Legislature that federal financial participation in both state and local programs be maximized. It is further the intent of the Legislature, in enacting this act, to provide for local governmental participation in the provision of targeted case management services pursuant to Section 1396n(g) of Title 42 of the United States Code and in Administrative Claiming, with maximum possible federal financial participation.

(2) It is further the intent of the Legislature to provide local governmental agencies the choice of participating in either or both of the Target Case Management (TCM) and Administrative Claiming process programs at their option, subject to the requirements of this section and Section 14132.44.

(b) The department may contract with each participating local governmental agency for the provision of administrative functions necessary for the proper and efficient administration of the Medi-Cal program, pursuant to Section 1396b(a) of Title 42 of the United States Code, Section 1903a of the federal Social Security Act, and this activity shall be known as the Administrative Claiming process.

(c) (1) As a condition for participation in the Administrative Claiming process, each participating local governmental agency shall, for the purpose of obtaining federal medicaid matching funds, execute a contract with the department and shall certify to the department the amount of funds expended on allowable administrative functions.

(2) The department shall deny the claim if it determines that the certification is not adequately supported for purposes of federal financial participation.

(d) Each Administrative Claiming process contract shall include a requirement that each participating local governmental agency submit a claiming plan in a manner prescribed by the department that does all of the following:

(1) Describes the nature of each local program claiming administrative costs pursuant to the contract.

(2) Describes each administrative function performed pursuant to the contract.

(3) Identifies each employee job category and number of employees directly responsible for the performance of any administrative function.

(4) Identifies the participating local governmental agency or

political subdivision thereof that employs or controls the employee job category responsible for the performance of any administrative function.

(5) Identifies, by local program, each nongovernmental entity and the choice of claiming method for that nongovernmental entity made pursuant to subdivision (*l*).

(e) The department shall require that each participating local governmental agency certify to the department both of the following:

(1) The availability and expenditure of 100 percent of the nonfederal share of the provision of Administrative Claiming process functions.

(2) In each fiscal year, that its expenditures represent costs that are eligible for federal financial participation for that fiscal year. The department shall deny the claim if it determines that the certification is not adequately supported for purposes of federal financial participation.

(f) (1) Notwithstanding any other provision of this section, the state shall be held harmless, in accordance with paragraphs (2), (3), and (4), from any final federal audit disallowance and interest resulting from payments made to a participating local governmental agency pursuant to this section.

(2) Each participating local governmental agency that has received payments under this section shall be liable for the same proportion of the disallowance and interest as the participating local governmental agency's paid claims pursuant to this section and Section 14132.44 less its contribution pursuant to subdivision (m), both in the fiscal year to which the disallowance pertains, bears to the particular participating local governmental agency's total claims pursuant to this section and Section 14132.44 in that same fiscal year.

(3) Each participating local governmental agency that has received payments under this section shall be liable for any final federal audit disallowance and interest only with respect to the payments made to that participating local governmental agency. In the event that the department is required or obligated to reimburse the federal medicaid program for a final federal audit disallowance and interest resulting from payments made to a participating local governmental agency for Administrative Claiming process functions pursuant to this section, the department shall recoup from that particular participating local governmental agency the same proportion of the disallowance and interest as the participating local governmental agency's paid claims pursuant to this section and Section 14132.44 less its contribution pursuant to subdivision (m), both in the fiscal year to which the disallowance pertains, bears to the particular participating local governmental agency's total claims pursuant to this section and Section 14132.44 in that same fiscal year.

(4) Notwithstanding paragraphs (2) and (3), to the extent that a final federal audit disallowance and interest results from a claim or claims for which the participating local governmental agency has

received reimbursement for Administrative Claiming process functions performed by a nongovernmental entity under contract with, and on behalf of, the participating local governmental agency, the department shall be held harmless by that particular participating local governmental agency for 100 percent of the amount of any such final federal audit disallowance and interest.

(g) The use of local matching funds required by this section shall not create, lead to, or expand the health care funding obligations or service obligations for current or future years for any participating local governmental agency, except as required by this section or as may be required by federal law.

(h) The department shall deny any claim from a participating local governmental agency if the department determines that the claim is not adequately supported in accordance with criteria established pursuant to this subdivision before it forwards such a claim for reimbursement to the federal medicaid program. In consultation with local government agencies, the department shall establish criteria, on or before October 1, 1994, for the submission and payment of claims by each participating local governmental agency for administrative functions. The criteria shall include, but not be limited to, all of the following standards:

(1) Methodology for determining and calculating personnel time studies submitted by each participating local governmental agency in support of its claims.

(2) Identification of each local program for which Medi-Cal administrative costs are being claimed by that participating local governmental agency. This identification shall be consistent with the participating local governmental agency's claiming plan.

(3) Identification of the local governmental agency or the political subdivision thereof submitting the claim. This identification shall be consistent with the participating local governmental agency's claiming plan.

(4) Methodology for identifying the population served by the performance of the administrative functions and the percentage of that population which consists of Medi-Cal beneficiaries.

(5) Methodology for identifying the costs of the administrative functions performed by each participating local governmental agency.

(6) A specific identification of the administrative functions, approved by the department, that are performed and being claimed by each participating local governmental agency pursuant to an executed contract, as described in subdivision (b).

(7) Methodology, applicable to any claim submitted by a participating local governmental agency based in whole or in part on health care services and administrative functions performed by the same employee of that agency, to demonstrate that no activity properly classified as a service or a part of a service is redesignated as an administrative function, and that the services and functions claimed are not duplicative.

(i) Administrative functions shall be necessary for the proper and efficient administration of the state's medicaid plan. After consultation with the participating local governmental agencies and subject to the requirements of federal law, the department may include, but not be limited to, the following functions:

(1) Functions or activities, under Medi-Cal, such as methods to inform or offer opportunity or assistance to recipients or potential recipients to enter into care through the Medi-Cal system.

(2) Monitoring the delivery of TCM services by TCM providers under contract with that participating local governmental agency.

(3) Administrative case management functions performed by the employees of a participating local governmental agency that may include, and are not limited to, the following:

(A) Informing or assisting recipients or potential recipients in entering into care; including prescreening, facilitating a Medi-Cal application, and enrollment.

(B) Case finding, assessment, case planning, and case coordination.

(C) Anticipatory guidance for complex health needs and medical consultation.

(D) Recipient assistance to access services.

(E) Provider relations, resource development, and quality management.

(F) Interagency coordination, program planning and development.

(G) Staff training, incidental nonmedical activities, and general administration.

(j) Claims submitted by participating local governmental agencies shall be reviewed by the department within 30 days of receipt. Any claim that cannot be approved shall promptly be returned to the participating local governmental agency, with a written explanation of the basis for denial if the claim is denied. All other claims shall be processed either for payment or for inclusion in the state's federal medicaid claim within 14 days of the claim review.

(k) If the department denies any claim submitted under this section or Section 14132.44, the affected participating local governmental agency may, within 30 days after receipt of written notice of the denial, request that the department reconsider its action. The participating local governmental agency may request a meeting with the director or his or her designee within 30 days to present its concerns to the department after the request is filed. If the director or his or her designee cannot meet, the department shall respond in writing indicating the specific reasons for which the claim is out of compliance to the participating local governmental agency in response to its appeal. Thereafter, the decision of the director shall be final.

(*l*) If a participating local governmental agency chooses to provide case management through an entity or person that is not

administered by, affiliated with, or employed by, a participating local governmental agency, it may, subject to applicable requirements of federal law, pursuant to a contract with the nongovernmental entity, claim costs by designating the entity in advance either as a TCM provider under Section 14132.44, or as performing administrative case management activities under this section. After the election is made as to each nongovernmental entity, the choice shall be reflected in the contract between the participating local governmental agency and the nongovernmental entity and be included in the participating local governmental agency's claiming plan pursuant to subdivision (c).

(m) (1) Each participating local governmental agency shall reimburse the department from its nonfederal, general fund revenues in an amount necessary to yield a combined total reimbursement of two hundred million dollars ($200,000,000) for the 1994–95 fiscal year and subsequent fiscal years for deposit in the Administrative Claiming Fund, which is hereby created, for transfer to the Health Care Deposit Fund.

(2) In accordance with subdivision (u), on or before August 1, 1994, and thereafter before July 1 of each year, the participating local governmental agencies shall determine the contribution of each participating local governmental agency to the total reimbursement amount set forth in paragraph (1).

(3) If the department is not advised of the final determination of those contribution amounts by the date specified in paragraph (2), the department shall specify, by October 1, 1994, and by September 1 of each year thereafter, the contribution amount for each participating local governmental agency. Upon notification by the department, each participating local governmental agency shall remit to the department the amounts required by this subdivision on a quarterly basis beginning within 30 days after the participating local governmental agency's receipt of quarterly payments for Administrative Claiming process services.

(4) Moneys received by the department pursuant to this subdivision are hereby continuously appropriated to the department for support of the Medi-Cal program, and the funds shall be administered in accordance with procedures prescribed by the Department of Finance. If not paid as provided in this section, the department may offset payments due to each participating local governmental agency from the state, not related to payments required to be made pursuant to this section and Section 14132.44, in order to recoup these funds for the Administrative Claiming Fund.

(n) As a condition of participation in the Administrative Claiming process and in recognition of revenue generated to each participating local governmental agency in the Administrative Claiming process, each participating local governmental agency shall pay an annual participation fee through a mechanism agreed to by the state and local governmental agencies, or, if no agreement is reached by August 1 of each year, directly to the state. The

participation fee shall be used to cover the cost of administering the Administrative Claiming process, including, but not limited to, claims processing, technical assistance, and monitoring. The amount of the participation fee shall be based upon the anticipated salaries, benefits, and operating expenses, to administer the Administrative Claiming process and other costs related to that process.

(o) For the purposes of this section "participating local governmental agency" means a county or chartered city under contract with the department pursuant to subdivision (b).

(p) For the purposes of this section, a "TCM provider" means an entity or person that is not administered by, affiliated with, or employed by a participating local governmental agency, but provides TCM services on behalf of a local governmental agency in accordance with a contract as required under Section 14132.44.

(q) The requirements of subdivision (m) shall not apply to claims for administrative functions, pursuant to the Administrative Claiming process, performed by a local educational agency and by public health programs administered by the state.

(r) A participating local governmental agency may charge an administrative fee to any entity claiming Administrative Claiming through that agency. The fee for local education agencies shall not exceed the percentage established for that county pursuant to subdivision (m).

(s) The department, subject to federal law, shall continue to administer the Administrative Claiming process according to current practices and procedures established by the department, in consultation with participating local government agencies, until such time as the criteria established pursuant to subdivision (h) are in effect.

(t) The department shall provide technical assistance to all local governmental agencies in order to maximize federal financial participation in the TCM and Administrative Claiming process programs.

(u) This section shall be applicable to Administrative Claiming process activities performed, and to moneys paid to participating local governmental agencies for those activities, in the 1994–95 fiscal year and thereafter.

SEC. 5. Of the funds appropriated for the 1994–95 fiscal year in Item 4260-111-001 of the Budget Act of 1994, one hundred thousand dollars ($100,000) shall be used for services or facilities provided by a domestic violence program in the San Fernando Valley of Los Angeles County.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to enact changes necessary to ensure appropriate implementation of public health services requirements for the 1994–95 fiscal year, it is necessary that this act go into immediate

effect.

CHAPTER 666

An act to repeal and add Part 1.85 (commencing with Section 444) of Division 1 of the Health and Safety Code, relating to cardiac catheterization.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Part 1.85 (commencing with Section 444) of Division 1 of the Health and Safety Code is repealed.

SEC. 2. Part 1.85 (commencing with Section 444) is added to Division 1 of the Health and Safety Code, to read:

PART 1.85. FREESTANDING CARDIAC CATHETERIZATION LABORATORIES

444. The Legislature finds and declares that:

(a) A pilot program was established by the Office of Statewide Health Planning and Development to test the feasibility of performing high quality, safe diagnostic cardiac catheterization procedures in a freestanding cardiac catheterization laboratory.

(b) Evaluation of this pilot program by the office demonstrated that it is feasible to conduct these procedures in nonhospital settings and that these laboratories maintain the quality of the diagnostic procedures while also reducing the cost of care.

(c) Based on this evaluation, it is the intent of the Legislature that those freestanding cardiac catheterization laboratories that are in active status in the pilot program be licensed.

444.1. (a) Notwithstanding any other provision of law, a freestanding cardiac catheterization laboratory that as of December 31, 1993, was in active status in the Health Care Pilot Project established pursuant to former Part 1.85 (commencing with Section 444) of this division, and that meets the requirements specified in this section, may be licensed by the State Department of Health Services as a freestanding cardiac catheterization laboratory. The license shall be subject to suspension or revocation, or both, in accordance with Article 5 (commencing with Section 1240) of Chapter 1 of Division 2. An application for licensure or annual renewal shall be accompanied by a fee of one thousand dollars ($1,000).

(b) A laboratory granted a license pursuant to this section shall be subject to the department's regulations that govern cardiac catheterization laboratories operating in hospitals without facilities

for cardiac surgery, any similar regulations that may be developed by the department specifically to govern freestanding cardiac catheterization laboratories, and to the following regulations: subdivisions (a) and (d) of Section 70129 of; paragraphs (1), (2), (3), and (4) of subdivision (a) of, and subdivision (i) of Section 70433 of; paragraphs (1), (3), (4), and (5) of subdivision (a) of Section 70435 of; subparagraphs (A), (B), and (D) of paragraph (1) of, and paragraphs (5) and (7) of, subdivision (b) of Section 70437 of; subdivision (a) of Section 70439 of; Sections 70841, 75021, and 75022 of; subdivision (a) of Section 75023 of; Sections 75024, 75025, and 75026 of; subdivisions (a), (b), and (c) of Section 75027 of; subdivision (b) of Section 75029 of; Section 75030 of; subdivision (b) of Section 75031 of; Sections 75034, 75035, 75037, 75039, 75045, and 75046 of; subdivision (a) of Section 75047 of; and Sections 75050, 75051, 75052, 75053, 75054, 75055, 75057, 75059, 75060, 75061, 75062, 75063, 75064, 75065, 75066, 75071, and 75072 of; Title 22 of the California Code of Regulations.

(c) A laboratory granted a license pursuant to this section shall have a system for the ongoing evaluation of its operations and the services it provides. This system shall include a written plan for evaluating the efficiency and effectiveness of the health care services provided that describes the following:

(1) The scope of the services provided.

(2) Measurement indicators regarding the processes and outcomes of the services provided.

(3) The assignment of responsibility when the data from the measurement indicators demonstrates the need for action.

(4) A mechanism to ensure followup evaluation of the effectiveness of the actions taken.

(5) An annual evaluation of the plan.

(d) A laboratory granted a license pursuant to this section is authorized to perform only the following diagnostic procedures:

(1) Right heart catheterization or angiography, or both.

(2) Left heart catheterization or angiography, or both.

(3) Coronary catheterization and angiography.

(4) Electrophysiology studies.

(e) A laboratory granted a license pursuant to this section shall only perform its procedures on adults, on an outpatient basis. Each laboratory shall define patient characteristics that are appropriate for safe performance of procedures in the laboratory, and include evaluation of these criteria in its quality assurance process.

(f) Notwithstanding the requirements already set forth in this chapter, freestanding cardiac catheterization laboratories shall comply with all other applicable federal, state, and local laws.

(g) This section shall become operative upon the effective date of the bill adding this section, and does not require the department to adopt regulations.

CHAPTER 667

An act to amend Section 6409 of the Labor Code, relating to occupational safety and health.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 6409 of the Labor Code is amended to read:

6409. (a) Every physician as defined in Section 3209.3 who attends any injured employee shall file a complete report of every occupational injury or occupational illness to the employee with the employer, or if insured, with the employer's insurer, on forms prescribed for that purpose by the Division of Labor Statistics and Research. A portion of the form shall be completed by the injured employee, if he or she is able to do so, describing how the injury or illness occurred. The form shall be filed within five days of the initial examination. Inability or failure of an injured employee to complete his or her portion of the form shall not affect the employee's rights under this code, and shall not excuse any delay in filing the form. The employer or insurer, as the case may be, shall file the physician's report with the Department of Industrial Relations, through its Division of Labor Statistics and Research, within five days of receipt. Each report of occupational injury or occupational illness shall indicate the social security number of the injured employee. If the treatment is for pesticide poisoning or a condition suspected to be pesticide poisoning, the physician shall also file a complete report, which need not include the affidavit required pursuant to this section, with the Division of Labor Statistics and Research, and within 24 hours of the initial examination shall file a complete report with the local health officer by facsimile transmission or other means. If the treatment is for pesticide poisoning or a condition suspected to be pesticide poisoning, the physician shall not be compensated for the initial diagnosis and treatment unless the report is filed with the employer, or if insured, with the employer's insurer, and includes or is accompanied by a signed affidavit which certifies that a copy of the report was filed with the local health officer pursuant to the requirements of this section.

(b) As used in this section, "occupational illness" means any abnormal condition or disorder caused by exposure to environmental factors associated with employment, including acute and chronic illnesses or diseases which may be caused by inhalation, absorption, ingestion, or direct contact.

CHAPTER 668

An act to amend Sections 9, 3440.1, and 3440.9 of, and to add Section 7.1 to, the Civil Code, to amend Sections 697.610, 697.730, and 697.740 of the Code of Civil Procedure, to amend Sections 1201, 2103, 5103, 9203, 9206, 9302, and 9312 of, and to add Division 16 (commencing with Section 16101) to, the Commercial Code, to amend Sections 866.5, 22007, 22013, 22054, 24054, and 26054 of the Financial Code, to amend Sections 7170 and 8261 of the Government Code, and to amend Sections 2953.1 and 20639.1 of the Revenue and Taxation Code, relating to uniform laws.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 7.1 is added to the Civil Code, to read:

7.1. Optional bank holidays within the meaning of Section 9 are:

(a) Any closing of a bank because of an extraordinary situation, as that term is defined in the Bank Extraordinary Situation Closing Act (Chapter 20 (commencing with Section 3600) of Division 1 of the Financial Code).

(b) Every Saturday.

(c) Every Sunday.

(d) January 1st.

(e) The third Monday in January, known as "Dr. Martin Luther King, Jr. Day."

(f) February 12, known as "Lincoln Day."

(g) The third Monday in February.

(h) The last Monday in May.

(i) July 4th.

(j) The first Monday in September.

(k) September 9th, known as "Admission Day."

(*l*) The second Monday in October, known as "Columbus Day."

(m) November 11th, known as "Veteran's Day."

(n) December 25th.

(o) Good Friday from 12 noon until closing.

(p) The Thursday in November appointed as "Thanksgiving Day."

(q) Any Monday following any Sunday on which January 1st, February 12th, July 4th, September 9th, November 11th, or December 25th falls.

(r) Any Friday preceding any Saturday on which July 4th, September 9th, or December 25th falls.

SEC. 2. Section 9 of the Civil Code is amended to read:

9. All other days than those mentioned in Section 7 are business days for all purposes; provided, that as to any act appointed by law or contract, or in any other way, to be performed by, at, or through

any bank organized under the laws of or doing business in this state, any optional bank holiday as defined in Section 7.1 is not a business day; and provided, that any act appointed by law or contract, or in any other way, to be performed on any day which is an optional bank holiday as defined in Section 7.1, by, at, or through any bank or branch or office thereof, whether acting in its own behalf or in any other capacity whatsoever, may be performed on that optional bank holiday if the bank or branch or office by, at, or through which the act is to be performed is open for the transaction of business on that optional bank holiday, or, at the option of the person obligated to perform the act, it may be performed on the next succeeding business day.

SEC. 3. Section 3440.1 of the Civil Code is amended to read:

3440.1. This chapter does not apply to any of the following:

(a) Things in action.

(b) Ships or cargoes if either are at sea or in a foreign port.

(c) The sale of accounts or chattel paper governed by the Uniform Commercial Code, security interests, and contracts of bottomry or respondentia.

(d) Wines or brandies in the wineries, distilleries, or wine cellars of the makers or owners of the wines or brandies, or other persons having possession, care, and control of the wines or brandies, and the pipes, casks, and tanks in which the wines or brandies are contained, if the transfers are made in writing and executed and acknowledged, and if the transfers are recorded in the book of official records in the office of the county recorder of the county in which the wines, brandies, pipes, casks, and tanks are situated.

(e) A transfer or assignment made for the benefit of creditors generally or by any assignee acting under an assignment for the benefit of creditors generally.

(f) Property exempt from enforcement of a money judgment.

(g) Standing timber.

(h) Subject to the limitations in Section 3440.3, a transfer of personal property if all of the following conditions are satisfied:

(1) Prior to the date of the intended transfer, the transferor or the transferee files a financing statement, with respect to the property transferred, signed by the transferor. The financing statement shall be filed in the office of the Secretary of State in accordance with Chapter 4 (commencing with Section 9401) of Division 9 of the Commercial Code, but may use the terms "transferor" in lieu of "debtor" and "transferee" in lieu of "secured party." The provisions of Chapter 4 (commencing with Section 9401) of Division 9 of the Commercial Code shall apply as appropriate to the financing statement.

(2) The transferor or the transferee publishes a notice of the intended transfer one time in a newspaper of general circulation published in the judicial district in which the personal property is located, if there is one, and if there is none in the judicial district, then in a newspaper of general circulation in the county embracing

the judicial district. The publication shall be completed not less than 10 days before the date the transfer occurs. The notice shall contain the name and address of the transferor and transferee and a general statement of the character of the personal property intended to be transferred, and shall indicate the place where the personal property is located and a date on or after which the transfer is to be made.

(i) Personal property not located within this state at the time of the transfer or attachment of the lien if the provisions of this subdivision are not used for the purpose of evading this chapter.

(j) A transfer of property which (1) is subject to a statute or treaty of the United States or a statute of this state that provides for the registration of transfers of title or issuance of certificates of title and (2) is so far perfected under that statute or treaty that a bona fide purchaser cannot acquire an interest in the property transferred that is superior to the interest of the transferee.

(k) A transfer of personal property in connection with a transaction in which the property is immediately thereafter leased by the transferor from the transferee provided the transferee purchased the property for value and in good faith (subdivision (c) of Section 10308 of the Commercial Code).

SEC. 4. Section 3440.9 of the Civil Code is amended to read:

3440.9. Subdivision (2) of Section 2402 and subdivision (a) of Section 10308 of the Commercial Code are not restricted by the provisions of this chapter.

SEC. 5. Section 697.610 of the Code of Civil Procedure is amended to read:

697.610. Except as provided in Section 9504 of the Commercial Code, a judgment lien on personal property continues notwithstanding the sale, exchange, or other disposition of the property, unless the person receiving the property is one of the following:

(a) A buyer in ordinary course of business (as defined in Section 1201 of the Commercial Code) who, under Section 9307 of the Commercial Code, would take free of a security interest created by the seller.

(b) A lessee in ordinary course of business (as defined in paragraph (15) of subdivision (a) of Section 10103 of the Commercial Code) who, under subdivision (c) of Section 10307 of the Commercial Code, would take free of a security interest created by the lessor.

(c) A holder to whom a negotiable document of title has been duly negotiated within the meaning of Section 7501 of the Commercial Code.

(d) A purchaser of chattel paper who gives new value and takes possession of the chattel paper in the ordinary course of business.

SEC. 6. Section 697.730 of the Code of Civil Procedure is amended to read:

697.730. (a) Subject to Section 701.630 and except as provided in subdivision (b), if tangible personal property subject to an execution

lien is in the custody of a levying officer and is transferred or encumbered, the property remains subject to the lien after the transfer or encumbrance.

(b) If a levy upon tangible personal property of a going business is made by the levying officer placing a keeper in charge of the business, a purchaser or lessee of property subject to the execution lien takes the property free of the execution lien if the purchaser is a buyer in ordinary course of business (as defined in Section 1201 of the Commercial Code) who, under Section 9307 of the Commercial Code, would take free of a security interest created by his or her seller or the lessee is a lessee in ordinary course of business (as defined in paragraph (15) of subdivision (a) of Section 10103 of the Commercial Code) who, under subdivision (c) of Section 10307 of the Commercial Code, would take free of a security interest created by the lessor.

SEC. 7. Section 697.740 of the Code of Civil Procedure is amended to read:

697.740. Except as provided in Section 9504 of the Commercial Code and in Section 701.630, if personal property subject to an execution lien is not in the custody of a levying officer and the property is transferred or encumbered, the property remains subject to the lien after the transfer or encumbrance except where the transfer or encumbrance is made to one of the following persons:

(a) A person who acquires an interest in the property under the law of this state for reasonably equivalent value without knowledge of the lien. For purposes of this subdivision, value is given for a transfer or encumbrance if, in exchange for the transfer or encumbrance, property is transferred or an antecedent debt is secured or satisfied.

(b) A buyer in ordinary course of business (as defined in Section 1201 of the Commercial Code) who, under Section 9307 of the Commercial Code, would take free of a security interest created by the seller or encumbrancer.

(c) A lessee in ordinary course of business (as defined in paragraph (15) of subdivision (a) of Section 10103 of the Commercial Code) who, under subdivision (c) of Section 10307 of the Commercial Code, would take free of a security interest created by the lessor.

(d) A holder in due course (as defined in Section 3302 of the Commercial Code) of a negotiable instrument within the meaning of Section 3104 of the Commercial Code.

(e) A holder to whom a negotiable document of title has been duly negotiated within the meaning of Section 7501 of the Commercial Code.

(f) A bona fide purchaser (as defined in Section 8302 of the Commercial Code) of a security.

(g) A purchaser of chattel paper or an instrument who gives new value and takes possession of the chattel paper or instrument in the ordinary course of business.

(h) A holder of a purchase money security interest (as defined in Section 9107 of the Commercial Code).

(i) A collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4210 of the Commercial Code.

(j) A person who acquires any right or interest in letters of credit, advices of credit, or money.

(k) A person who acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of the security interest.

SEC. 8. Section 1201 of the Commercial Code is amended to read:

1201. Subject to additional definitions contained in the subsequent divisions of this code which are applicable to specific divisions or chapters thereof, and unless the context otherwise requires, in this code:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this code (Sections 1205, 2208, and 10207). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable; otherwise by the law of contracts (Section 1103). (Compare "contract.")

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and which, by its terms, evidences the intention of the issuer that the person entitled under the document (Section 7403(4)) has the right to receive, hold and dispose of the document and the goods it covers. Designation of a document by the issuer as a "bill of lading" is conclusive evidence of such intention. "Bill of lading" includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who in

good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or mineralhead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for, or in total or partial satisfaction of, a money debt.

(10) "Conspicuous." A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this code and any other applicable rules of law. (Compare "agreement.")

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt, gin ticket, compress receipt, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person entitled under the document (Section 7403(4)) has the right to receive, hold and dispose of the document and the goods it covers. To be a document of title, a document shall purport to be issued by a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this code to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder," with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder," with respect to a document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) A person has "notice" of a fact when any of the following occurs:

(a) He or she has actual knowledge of it.

(b) He or she has received a notice or notification of it.

(c) From all the facts and circumstances known to him or her at the time in question, he or she has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when any of the following occurs:

(a) It comes to his or her attention.

(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his or her attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the

person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of his or her regular duties or unless he or she has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within this division.

(30) "Person" includes an individual or an organization. (See Section 1102.)

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) (a) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2401) is limited in effect to a reservation of a "security interest." The term also includes any interest of a buyer of accounts or chattel paper which is subject to Division 9 (commencing with Section 9101). The special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 2401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with Division 9 (commencing with Section 9101). Unless a consignment is intended as security, reservation of title thereunder is not a "security interest," but a consignment in any event is subject to the provisions on consignment sales (Section 2326).

(b) Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and

(i) The original term of the lease is equal to or greater than the remaining economic life of the goods,

(ii) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,

(iii) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(iv) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(c) A transaction does not create a security interest merely because it provides that

(i) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(ii) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(iii) The lessee has an option to renew the lease or to become the owner of the goods,

(iv) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(v) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) For purposes of this subdivision (37):

(i) Additional consideration is not nominal if (A) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (B) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(ii) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(iii) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to

deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending. When a writing or notice is required to be sent by registered or certified mail, proof of mailing is sufficient, and proof of receipt by the addressee is not required unless the words "with return receipt requested" are also used.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections (Sections 3303, 4210, and 4211), a person gives "value" for rights if he or she acquires them in any of the following ways:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection.

(b) As security for, or in total or partial satisfaction of, a preexisting claim.

(c) By accepting delivery pursuant to a preexisting contract for purchase.

(d) Generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a document evidencing the receipt of goods for storage issued by a warehouseman (Section 7102), and which, by its terms, evidences the intention of the issuer that the person entitled under the document (Section 7403(4)) has the right to receive, hold and dispose of the document and the goods it covers. Designation of a document by the issuer as a "warehouse receipt" is conclusive evidence of such intention.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

SEC. 9. Section 2103 of the Commercial Code is amended to read:

2103. (1) In this division unless the context otherwise requires

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this division or to specified chapters thereof, and the sections in which they appear are:

"Acceptance." Section 2606.

"Banker's credit." Section 2325.

"Between merchants." Section 2104.

"Cancellation." Section 2106(4).

"Commercial unit." Section 2105.

"Confirmed credit." Section 2325.

"Conforming to contract." Section 2106.

"Contract for sale." Section 2106.

"Cover." Section 2712.

"Entrusting." Section 2403.

"Financing agency." Section 2104.

"Future goods." Section 2105.

"Goods." Section 2105.

"Identification." Section 2501.

"Installment contract." Section 2612.

"Letter of Credit." Section 2325.

"Lot." Section 2105.

"Merchant." Section 2104.

"Overseas." Section 2323.

"Person in position of seller." Section 2707.

"Present sale." Section 2106.

"Sale." Section 2106.

"Sale on approval." Section 2326.

"Sale or return." Section 2326.

"Termination." Section 2106.

(3) The following definitions in other divisions apply to this division:

"Check." Section 3104.

"Consignee." Section 7102.

"Consignor." Section 7102.

"Consumer goods." Section 9109.

"Dishonor." Section 3502.

"Draft." Section 3104.

(4) In addition Division 1 contains general definitions and principles of construction and interpretation applicable throughout this division.

SEC. 10. Section 5103 of the Commercial Code is amended to read:

5103. (1) In this division unless the context otherwise requires

(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this division (Section 5102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an

agreement to honor or a statement that a bank or other person is authorized to honor.

(b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

(c) An "issuer" is a bank or other person issuing a credit.

(d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.

(e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

(f) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

(g) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

(2) Other definitions applying to this division and the sections in which they appear are:

"Notation of credit." Section 5108.

"Presenter." Section 5112(3).

(3) Definitions in other divisions applying to this division and the sections in which they appear are:

"Accept" or "acceptance." Section 3409.

"Contract for sale." Section 2106.

"Draft." Section 3104.

"Holder in due course." Section 3302.

"Midnight deadline." Section 4104.

"Security." Section 8102.

(4) In addition, Division 1 contains general definitions and principles of construction and interpretation applicable throughout this division.

SEC. 11. Section 9203 of the Commercial Code is amended to read:

9203. (1) Subject to the provisions of Section 4210 on the security interest of a collecting bank, Section 8321 on security interests in securities, and Section 9113 on a security interest arising under the divisions on sales and leases, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless all of the following are applicable:

(a) The collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned.

(b) Value has been given.

(c) The debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable

against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subdivision (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed, a security agreement gives the secured party the rights to proceeds provided by Section 9306.

(4) A transaction, although subject to this division, is also subject to the Retail Installment Sales Act, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code; the Automobile Sales Finance Act, Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code; the Industrial Loan Law, Division 7 (commencing with Section 18000) of the Financial Code; the Pawnbroker Law, Division 8 (commencing with Section 21000) of the Financial Code; the Personal Property Brokers Law, Division 9 (commencing with Section 22000) of the Financial Code; the Consumer Finance Lenders Law, Division 10 (commencing with Section 24000) of the Financial Code; the Commercial Finance Lenders Law, Division 11 (commencing with Section 26000) of the Financial Code; and the Mobilehomes-Manufactured Housing Act of 1980, Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code, and in the case of conflict between the provisions of this division and that statute, the provisions of that statute control. Failure to comply with any applicable statute has only the effect which is specified in that statute.

SEC. 12. Section 9206 of the Commercial Code is amended to read:

9206. (1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the division on negotiable instruments (Division 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the division on sales (Division 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

SEC. 13. Section 9302 of the Commercial Code is amended to read:

9302. (1) A financing statement must be filed to perfect all security interests except the following:

(a) A security interest in collateral in possession of the secured party under Section 9305.

(b) A security interest temporarily perfected in instruments or documents without delivery under Section 9304 or in proceeds for a 10-day period under Section 9306.

(c) A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate.

(d) A purchase money security interest in consumer goods; but filing is required for a motor vehicle or boat required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in Section 9313.

(e) A security interest of a collecting bank (Section 4210) or in securities (Section 8321) or arising under the divisions on sales and leases (see Section 9113) or covered in subdivision (3) of this section.

(f) An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(g) A security interest in a deposit account. Such a security interest is perfected:

(i) As to a deposit account maintained with the secured party, when the security agreement is executed.

(ii) As to a deposit account not described in subparagraph (i), when notice thereof is given in writing to the organization with whom the deposit account is maintained.

(h) A security interest in or claim in or under any policy of insurance including unearned premiums. Such interest shall be perfected when notice thereof is given in writing to the insurer.

(2) If a secured party assigns a perfected security interest, no filing under this division is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this division is not necessary or effective to perfect a security interest in property subject to any of the following:

(a) A statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this division for filing of the security interest.

(b) The provisions of the Vehicle Code which require registration of a vehicle or boat, or provisions of the Health and Safety Code which require registration of a mobilehome or commercial coach; but during any period in which collateral is inventory, the filing provisions of this division (Chapter 4 (commencing with Section 9401)) apply to a security interest in that collateral.

(c) A certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subdivision (2) of Section 9103).

(d) The provisions of the Health and Safety Code which require registration of all interests in approved air contaminant emission reductions (Sections 40709 to 40713, inclusive, of the Health and Safety Code).

(4) Compliance with a statute or treaty described in subdivision (3) is equivalent to the filing of a financing statement under this division and a security interest in property subject to the statute or

treaty can be perfected only by compliance therewith except as provided in Section 9103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this division.

SEC. 14. Section 9312 of the Commercial Code is amended to read:

9312. (1) The rules of priority stated in other sections of this chapter and in the following sections shall govern where applicable: Section 4210 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; Section 9103 on security interests related to other jurisdictions; Section 9114 on consignments.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if all of the following occur:

(a) The purchase money security interest is perfected at the time the debtor receives possession of the inventory.

(b) The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the 21-day period where the purchase money security interest is temporarily perfected without filing or possession (subdivision (5) of Section 9304).

(c) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory.

(d) The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subdivisions (3) and (4)), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the

first to attach has priority.

(6) For the purposes of subdivision (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under Section 8321 on securities, the security interest has the same priority for the purposes of subdivision (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

SEC. 15. Division 16 (commencing with Section 16101) is added to the Commercial Code, to read:

DIVISION 16. EFFECTIVE DATE AND TRANSITION PROVISIONS

16101. The repeal and addition of Division 3 (commencing with Section 3101) and the repeal and addition, the amendment, and the addition of provisions of Division 4 (commencing with Section 4101), and the amendment of related sections, adopted by the Legislature in Chapter 914 of the Statutes of 1992, shall become effective on January 1, 1993. The Legislature intends that the that action be construed as an amendment of Division 3 (commencing with Section 3101) and Division 4 (commencing with Section 4101), notwithstanding that the action took the form of a repeal and addition of Division 3 (commencing with Section 3101), and a repeal and addition to, and amendment of, or an addition to the provisions of Division 4 (commencing with Section 4101).

16102. The provisions of Division 13 (commencing with Section 13101), Division 14 (commencing with Section 14101), and Division 15 (commencing with Section 15101) shall continue to apply to this code, as this code existed on January 1, 1993, and for this purpose, this code, as it existed prior to January 1, 1993, and this code, as it existed on January 1, 1993, shall be considered one continuous statute.

16103. Nothing in this division shall have the effect of (a) reviving a cause of action barred by limitation before January 1, 1993, or (b) applying Section 3118 or 4111 on limitation of actions to an action commenced before January 1, 1993.

16104. Unless a change in law, as contrasted with a clarification, has clearly been made, this code, as it existed on January 1, 1993, shall be deemed declaratory of the meaning of this code as it existed prior to January 1, 1993.

SEC. 16. Section 866.5 of the Financial Code is amended to read:

866.5. The appropriate state regulatory agency for each depository institution shall issue administrative regulations to define a reasonable time for permitting customers to draw on items

received for deposit in the customer's account. It is the public policy of this state to provide retail banking customers with the right to withdraw against items deposited with any depository institution located in this state within a reasonable period of time.

SEC. 17. Section 22007 of the Financial Code is amended to read:

22007. As used in this division, the terms "security interest," "accounts," "chattel paper," "documents," "general intangibles," "goods" and "instruments" are as defined in the Uniform Commercial Code.

SEC. 18. Section 22013 of the Financial Code is amended to read:

22013. A commercial loan is a loan secured in the manner provided for in this division if it is secured, in whole or in part, by any lien on, security interest in, assignment of, or power of attorney relative to income arising from the operation of a business by the borrower, such as accounts and chattel paper, including the right to payment for accounts or chattel paper sold by the borrower prior to or contemporaneously with the making of such loan.

SEC. 19. Section 22054 of the Financial Code is amended to read:

22054. Any section which refers to this section does not apply to any loan of the bona fide principal amount specified in the regulatory ceiling provision of that section or more if that provision is not used for the purpose of evading this division. In determining under Section 22053, 22053.1, 22451, or 22451.1, or any section which refers to this section whether a loan is a loan of a bona fide principal amount of the amount specified in that section or more and whether the regulatory ceiling provision of that section is used for the purpose of evading this division, the following principles apply:

(a) If a borrower applies for a loan in a principal amount of less than the specified amount and a loan to that borrower of a principal amount of the specified amount or more is made by a licensed personal property broker, no adequate economic reason for the increase in the size of the loan exists, and by prearrangement or understanding between the borrower and the licensee a substantial payment is to be made upon the loan with the effect of reducing the principal amount of the loan to less than the specified amount within a short time after the making of the loan other than by reason of a requirement that the loan be paid in substantially equal periodical installments, then the loan shall not be deemed to be a loan of the bona fide principal amount of the specified amount or more and the regulatory ceiling provisions shall be deemed to be used for the purpose of evading this division unless the loan complies with the other provisions of the section which includes the regulatory ceiling provisions.

(b) If a loan made by a licensed personal property broker is in a principal amount of the specified amount or more, the fact that the transaction is in the form of a sale of accounts, chattel paper, goods, or instruments or a lease of goods, or in the form of an advance on the purchase price of any of the foregoing, shall not be deemed to affect the loan or the bona fides of the amount thereof or to indicate

that the regulatory ceiling provisions are used for the purpose of evading this division.

SEC. 20. Section 24054 of the Financial Code is amended to read:

24054. Any section which refers to this section does not apply to any loan of the bona fide principal amount specified in the regulatory ceiling provision of that section or more if that provision is not used for the purpose of evading this division. In determining under Section 24053, 24053.1, 24451, or 24451.1, or any section which refers to this section whether a loan is a loan of a bona fide principal amount of the amount specified in that section or more and whether the regulatory ceiling provision of that section is used for the purpose of evading this division, the following principles apply:

(a) If a borrower applies for a loan in a principal amount of less than the specified amount and a loan to that borrower of a principal amount of the specified amount or more is made by a licensed consumer finance lender, no adequate economic reason for the increase in the size of the loan exists, and by prearrangement or understanding between the borrower and the licensee a substantial payment is to be made upon the loan with the effect of reducing the principal amount of the loan to less than the specified amount within a short time after the making of the loan other than by reason of a requirement that the loan be paid in substantially equal periodical installments, then the loan shall not be deemed to be a loan of the bona fide principal amount of the specified amount or more and the regulatory ceiling provisions shall be deemed to be used for the purpose of evading this division unless the loan complies with the other provisions of the section which includes the regulatory ceiling provisions.

(b) If a loan made by a licensed consumer finance lender is in a principal amount of the specified amount or more, the fact that the transaction is in the form of a sale of accounts, chattel paper, goods, or instruments, or a lease of goods, or in the form of an advance on the purchase price of any of the foregoing, shall not be deemed to affect the loan or the bona fides of the amount thereof or to indicate that the regulatory ceiling provisions are used for the purpose of evading this division.

SEC. 21. Section 26054 of the Financial Code is amended to read:

26054. In determining whether a loan is a loan of a bona fide principal amount of the specified amount or more, the following principles shall apply:

(a) If a borrower applies for a loan in a principal amount of less than the specified amount and a loan to that borrower of a principal amount of the specified amount or more is made by a licensed commercial finance lender, no adequate economic reason for the increase in the size of the loan exists, and by prearrangement or understanding between the borrower and the licensee a substantial payment is to be made upon the loan with the effect of reducing the principal amount of the loan to less than the specified amount within a short time after the making of the loan other than by reason of a

requirement that the loan be paid in substantially equal periodical installments, then the loan shall not be deemed to be a loan of the bona fide principal amount of the specified amount or more.

(b) A subsequent advance of money of less than the specified amount pursuant to a revolving or open-end loan agreement or similar agreement between a borrower and a licensed commercial finance lender which gives the borrower the right to draw upon all or any part of the line of credit, or a loan agreement providing for the making of advances to the borrower from time to time up to an aggregate maximum amount which gives the borrower the right to draw all or any part of the total amount, shall be deemed to be a loan of a principal amount of the specified amount or more if the line of credit or the aggregate maximum amount is the specified amount or more and the initial advance was the specified amount or more even though the actual unpaid balance after the advance or at any other time is less than the specified amount.

(c) If a loan made by a licensed commercial finance lender is in a principal amount of the specified amount or more, the fact that the transaction is in the form of a sale of accounts, chattel paper, goods, or instruments, or a lease of goods, or in the form of an advance on the purchase price of any of the foregoing, shall not be deemed to affect the bona fides of the amount thereof.

(d) For the purposes of this section, "the specified amount" means five thousand dollars ($5,000).

SEC. 22. Section 7170 of the Government Code is amended to read:

7170. (a) Except as provided in subdivisions (b) and (c), a state tax lien attaches to all property and rights to property whether real or personal, tangible or intangible, including all after-acquired property and rights to property, belonging to the taxpayer and located in this state. A state tax lien attaches to a dwelling notwithstanding the prior recording of a homestead declaration (as defined in Section 704.910 of the Code of Civil Procedure).

(b) A state tax lien is not valid as to real property against the right, title, or interest of any of the following persons where the person's right, title, or interest was acquired or perfected prior to recording of the notice of state tax lien in the office of the county recorder of the county in which the real property is located pursuant to Section 7171:

(1) A successor in interest of the taxpayer without knowledge of the lien.

(2) A holder of a security interest.

(3) A mechanic's lienor.

(4) A judgment lien creditor.

(c) A state tax lien is not valid as to personal property against:

(1) The holder of a security interest in the property whose interest is perfected pursuant to Section 9303 of the Commercial Code prior to the time the notice of the state tax lien is filed with the Secretary of State pursuant to Section 7171.

(2) Any person (other than the taxpayer) who acquires an interest in the property under the law of this state without knowledge of the lien or who perfects an interest in accordance with the law of this state prior to the time that the notice of state tax lien is filed with the Secretary of State pursuant to Section 7171.

(3) A buyer in ordinary course of business who, under Section 9307 of the Commercial Code, would take free of a security interest created by the seller.

(4) Any person (other than the taxpayer) who, notwithstanding the prior filing of the notice of the state tax lien:

(A) Is a holder in due course of a negotiable instrument.

(B) Is a holder to whom a negotiable document of title has been duly negotiated.

(C) Is a bona fide purchaser of a security.

(D) Is a purchaser of chattel paper or an instrument who gives new value and takes possession of the chattel paper or instrument in the ordinary course of business.

(E) Is a holder of a purchase money security interest.

(F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4210 of the Commercial Code.

(G) Acquires a security interest in a deposit account or in the beneficial interest in a trust or estate.

(H) Acquires any right or interest in letters of credit, advices of credit, or money.

(I) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums.

(J) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of the security interest.

(5) A judgment lien creditor whose lien was created by the filing of a notice of judgment lien on personal property with the Secretary of State prior to the time the notice of state tax lien is filed with the Secretary of State pursuant to Section 7171.

SEC. 23. Section 8261 of the Government Code is amended to read:

8261. The commission consists of one Member of the Senate, appointed by the Committee on Rules, one Member of the Assembly, appointed by the Speaker, six additional members, appointed by the Governor, the Legislative Counsel, any person, not otherwise a member of the commission, elected as a life member of the National Conference of Commissioners on Uniform State Laws based upon service as a member of the commission, and any person, not otherwise a member of the commission, who served as a member of the commission, other than as an appointee of the Governor, for a period of at least five years.

The Members of the Legislature appointed to the commission shall

serve at the pleasure of the appointing power and shall participate in the activities of the commission to the extent that the participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this article, the Members of the Legislature shall constitute a joint interim investigating committee on the subject of this article and shall have the powers and duties imposed upon those committees by the Joint Rules of the Senate and Assembly.

SEC. 24. Section 2953.1 of the Revenue and Taxation Code is amended to read:

2953.1. Notwithstanding the provisions of Section 2953, any property which is assessed on the unsecured roll and is advertised for sale pursuant to Sections 6101 to 6111, inclusive, of the Uniform Commercial Code, or which is advertised to be sold at public auction, or which has been seized for prior year's delinquent taxes may be seized by the tax collector prior to delinquency without filing a declaration with the clerk of the board of supervisors.

SEC. 25. Section 20639.1 of the Revenue and Taxation Code is amended to read:

20639.1. (a) Unless the context otherwise requires or unless otherwise provided in this chapter, the definitions given in Chapter 1 (commencing with Section 20501) and Chapter 2 (commencing with Section 20581) shall govern the construction of this chapter.

(b) Unless the context otherwise dictates or unless otherwise provided in this chapter, the provisions of Chapter 1 (commencing with Section 101) and Chapter 2 (commencing with Section 155) of Part 1 of Division 1 of this code, Section 2931c of the Civil Code, Chapter 4.5 (commencing with Section 14735) of Part 5.5 of Division 3 of Title 2 of the Government Code, Chapter 6 (commencing with Section 16180) of Part 1 of Division 4 of Title 2 of the Government Code, Division 13 (commencing with Section 17000) of the Health and Safety Code, and Division 9 (commencing with Section 9101) of the Commercial Code shall be applicable to property tax postponements made pursuant to this chapter.

CHAPTER 669

An act to amend Section 18035.3 of the Health and Safety Code, relating to mobilehomes.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 18035.3 of the Health and Safety Code is amended to read:

18035.3. (a) For every sale by a dealer of a new or used

manufactured home or mobilehome, either the purchase order, conditional sale contract, or other document evidencing the purchase thereof, or any attachment to a purchase document signed and dated by the purchaser, shall contain the following:

(1) A description of the manufactured home or mobilehome, a description and the cash price of each accessory, structure, or service included with the purchase, and the total cash price for the purchase. The statement shall also state whether the purchase price includes or excludes the towbar, wheels, wheel hubs, tires, and axles and, if they are not included in the purchase price, the price of each shall be listed.

(2) The amount, if any, charged by the dealer for documentary preparation and, if a documentary preparation charge is imposed, a notice advising the purchaser that the charge is not a governmental fee.

(3) A notice in type no smaller than 8-point that complaints concerning the purchase shall be referred to the dealer and, if the complaint is not resolved, may be referred to the Department of Housing and Community Development, Division of Codes and Standards, Occupational Licensing. The notice shall contain the current address and telephone number of the department.

(4) A notice, in at least 10-point boldface type reading as follows:

(A) Do NOT sign the purchase agreement before you read it or if it contains any blank spaces to be filled in.

(B) You are entitled to a completely filled-in copy of that agreement and, if purchasing a manufactured home or mobilehome covered by a warranty, a copy of the warranty.

(5) The name, business address, and contractor's license number of the licensed contractor whom the dealer certifies as performing the installation of the manufactured home or mobilehome pursuant to subdivision (c) of Section 7027 of the Business and Professions Code.

(6) The disclosures required by this subdivision need not be contained in the same document.

(b) A failure to disclose pursuant to this section shall not be the basis for rescission of a conditional sales contract.

(c) Notwithstanding any other provision of this part to the contrary, a failure to provide the disclosures specified in paragraph (5) of subdivision (a) is a ground for disciplinary action and not a criminal offense.

(d) If the dealer is also licensed as a real estate broker, the sale of a manufactured home or mobilehome being installed on a foundation system pursuant to Section 18551 may be included in the purchase document for the underlying real property, provided that the requirements of this section are met.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction,

changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 670

An act to amend Section 2610 of the Family Code and to add Article 8.4 (commencing with Section 31685) to Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code, relating to the County Employees Retirement Law of 1937.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 2610 of the Family Code is amended to read:

2610. (a) Except as provided in subdivision (b), the court shall make whatever orders are necessary or appropriate to ensure that each party receives the party's full community property share in any retirement plan, whether public or private, including all survivor and death benefits, including, but not limited to, any of the following:

(1) Order the division of any retirement benefits payable upon or after the death of either party in a manner consistent with this division.

(2) Order a party to elect a survivor benefit annuity or other similar election for the benefit of the other party, as specified by the court, in any case in which a retirement plan provides for such an election, provided that no court shall order a retirement plan to provide increased benefits determined on the basis of actuarial value.

(3) Order the division of accumulated community property contributions and service credit as provided in Article 1.2 (commencing with Section 21215) of Chapter 9 of Part 3 of Division 5 of Title 2 of, Article 8.4 (commencing with Section 31685) of Chapter 3 of Part 3 of Division 4 of Title 3 of, or Article 2.5 (commencing with Section 75050) of Chapter 11 of Title 8 of, the Government Code.

(4) Order the division of community property rights in accounts with the State Teachers' Retirement System pursuant to Chapter 7.5 (commencing with Section 22650) of Part 13 of the Education Code.

(5) Order a retirement plan to make payments directly to a nonmember party of his or her community property interest in retirement benefits.

(b) A court shall not make any order that requires a retirement

plan to do either of the following:

(1) Make payments in any manner that will result in an increase in the amount of benefits provided by the plan.

(2) Make the payment of benefits to any party at any time before the member retires, except as provided in paragraphs (3) and (4) of subdivision (a), unless the plan so provides.

(c) This section shall not be applied retroactively to payments made by a retirement plan to any person who retired or died prior to January 1, 1987, or to payments made to any person who retired or died prior to June 1, 1988, for plans subject to paragraphs (3) and (4) of subdivision (a).

SEC. 2. Article 8.4 (commencing with Section 31685) is added to Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code, to read:

Article 8.4. Community Property

31685. (a) Upon the legal separation or dissolution of marriage of a member, after joining the retirement system as a party to the proceeding pursuant to Chapter 6 (commencing with Section 2060) of Part 1 of Division 6 of the Family Code, the court shall include in the judgment or a court order the date on which the parties separated.

(b) If the court orders the division of the community property interest in the system pursuant to Section 2610 of the Family Code, the accumulated contributions and service credit attributable to periods of service during the marriage shall be divided into two separate and distinct accounts in the name of the member and nonmember, respectively. Any service credit or accumulated contributions that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.

(c) Upon receipt of the court order separating the account of the member and the nonmember pursuant to this section, the board shall determine the rights of the nonmember, taking into consideration the court order and the account of the member. These rights may include the following:

(1) The right to a retirement allowance.

(2) The right to a refund of accumulated retirement contributions.

(3) The right to redeposit accumulated contributions that are eligible for redeposit by the member.

(4) The right to purchase service credit that is eligible for purchase by the member.

(5) The right to designate a beneficiary to receive his or her accumulated contributions payable where death occurs prior to retirement.

(6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember's death.

(d) In the capacity of nonmember, the nonmember shall not be

entitled to any disability retirement allowance.

31685.1. "Nonmember," as used in this article, means the spouse or former spouse, or child or other dependent as ordered by the court, of a member, who as a result of petitioning the court for the division of community property, has been awarded a distinct and separate account reflecting specific credited service and accumulated contributions.

31685.2. (a) The nonmember who is awarded a separate account shall have the right to a refund of the accumulated contributions and interest credited in the separate account of the nonmember.

(b) The nonmember shall file an application on a form provided by the system to obtain the refund.

(c) The refund shall be effective when the system deposits in the United States mail an initial warrant drawn in favor of the nonmember and addressed to the latest address for the nonmember on file with the system.

(d) The nonmember is deemed to have permanently waived all rights in the system and all rights to any future retirement benefits pertaining to the service credit accumulated contributions, or both, when the refund becomes effective.

(e) The nonmember may not cancel a refund once it has become effective.

(f) The nonmember shall have no right to elect to redeposit the refunded accumulated contributions from the nonmember's account after the refund is effective, and shall have no right to redeposit or to purchase service credit after the refund becomes effective.

(g) If at the time of the marriage dissolution or legal separation, the member does not have the necessary minimum credited service to elect deferred retirement, the nonmember shall receive a refund of the accumulated contributions and credited interest placed in the nonmember's account.

(h) If the nonmember receives a refund under this section, the member may elect to redeposit accumulated contributions and interest refunded to the nonmember and to receive credit for the service time that had been forfeited by the nonmember. The election shall be made within five years of receipt of notice from the board of eligibility to redeposit the contributions. The board shall establish the manner of payment and the time period within which the redeposit of contributions may be made. The interest rate established by the board shall be the same as that charged to members on all other redeposits.

31685.3. (a) The nonmember who is awarded a separate account may redeposit accumulated contributions and interest previously refunded to the member in accordance with the determination of the court required by Section 31685.

(b) The nonmember may redeposit only those accumulated contributions and interest that were previously refunded to the member and that the court has determined to be the community property interest of the nonmember in the accumulated

contributions.

(c) If the nonmember elects to redeposit, he or she shall repay the accumulated contributions and interest.

(d) An election to redeposit shall be considered an election to repay all accumulated contributions and interest previously refunded that the nonmember is entitled to redeposit.

(e) The right of the nonmember to redeposit is subject to the regulations of the board.

(f) The member has no right to the court-determined nonmember share of any previously refunded accumulated contributions and interest whether or not the nonmember elects to redeposit until the effective date of any refund requested by the nonmember pursuant to Section 31685.2, or the nonmember dies before redeposit is completed. However, any right to redeposit previously refunded accumulated contributions and interest not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

(g) Any redeposit by the nonmember shall be made by lump sum before retirement.

31685.4. (a) The nonmember shall have the right to purchase service credit pursuant to the determination of the court required by Section 31685.

(b) The nonmember may purchase only that service credit that the court has determined to be the community property share of the nonmember spouse.

(c) If the nonmember elects to purchase service credit, he or she shall pay, prior to retirement, the contributions and interest pursuant to the regulations of the board.

(d) The nonmember shall have no right to purchase the service credit after the effective date of a refund of the accumulated contributions in the separate account of the nonmember.

(e) The member has no right to the court-determined nonmember share of the service credit whether or not the nonmember elects to purchase the service credit until the effective date of any refund requested by the nonmember pursuant to Section 31685.2, or the nonmember dies before the service credit is purchased. However, any service credit eligible for purchase that is not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

31685.5. A nonmember shall be retired upon his or her written application to the board if all of the following conditions are met:

(a) The member or nonmember has attained the minimum age prescribed by the applicable service retirement formula of the member.

(b) On the date of marriage dissolution or legal separation, the member had sufficient credited service to retire for service.

31685.6. Retirement shall be effective and the retirement allowance shall begin to accrue as of the date designated in the nonmember's application as the effective date of retirement, or the

day following the date of court order dividing the community property of the member and nonmember, if later. In no event shall the retirement become effective or the retirement allowance begin to accrue earlier than the first day of the month in which the nonmember's application is received at an office of the board or by an employee of the system designated by the board.

31685.7. (a) If the nonmember retires before the member retires, "final compensation" means the highest average annual compensation earnable by the member during the three consecutive years, or one year where applicable, prior to the date the nonmember retires. The nonmember may designate an earlier period to be used where the time period of the nonmember's marriage to the member and membership correspond.

(b) If the member has retired before the nonmember, the "final compensation" for the nonmember shall be the final compensation used in calculating the member's retirement.

(c) Upon receipt of an application for retirement by the member, the board shall notify the nonmember that his or her final compensation will not increase any further and shall identify which options are available to the nonmember and the impact thereof.

31685.8. A nonmember entitled to receive a retirement allowance shall receive a retirement allowance based on the service retirement formula applicable to the service credited to the nonmember.

31685.9. If a member becomes disabled, the combined benefit payments to both the member and nonmember shall not exceed the amount that would otherwise be paid to the member alone.

31685.95. (a) Under no circumstances shall a retirement plan be required to make payments in any manner that will result in an increase in the amount of benefits provided under the plan.

(b) All benefits determined pursuant to Part 5 (commencing with Section 2610) of Division 7 of the Family Code and this article shall be determined on the basis of the actuarial economic and demographic assumptions and values prescribed by the board of the affected retirement plan.

31685.96. (a) The age factor applicable to the nonmember shall be based on the age of the nonmember at the time of his or her retirement.

(b) The board shall adopt age factors as recommended by the actuary.

31685.96. This article shall not be operative in any county until the board of supervisors shall, by resolution adopted by a majority vote, make this article applicable in the county.

CHAPTER 671

An act to amend Section 19608 of, to repeal Sections 19542, 19543, 19544, and 19545 of, and to repeal and add Section 19541 of, the Business and Professions Code, relating to horseracing.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 19541 of the Business and Professions Code is repealed.

SEC. 2. Section 19541 is added to the Business and Professions Code, to read:

19541. In order to encourage and develop the racing of all horses in California, regardless of breed, whenever a state designated fair conducts a program of horseraces on which there is parimutuel wagering, the fair, so far as practicable, shall provide a program of mixed breed racing that includes thoroughbred racing, quarterhorse racing, Arabian racing, and Appaloosa racing, if a sufficient number of horses are available to provide competition in one or more races.

SEC. 3. Section 19542 of the Business and Professions Code is repealed.

SEC. 4. Section 19543 of the Business and Professions Code is repealed.

SEC. 5. Section 19544 of the Business and Professions Code is repealed.

SEC. 6. Section 19545 of the Business and Professions Code is repealed.

SEC. 7. Section 19608 of the Business and Professions Code is amended to read:

19608. An association other than a fair that conducts a horseracing meeting with an average daily handle of one million five hundred thousand dollars ($1,500,000) or more shall produce a live audiovisual signal of its racing program and shall make this signal available, in accordance with subdivision (a) of Section 19605.3 to any satellite wagering facility authorized to conduct wagering pursuant to Section 19605, 19605.1, 19605.2, or 19605.6.

CHAPTER 672

An act to amend Section 11806 of the Government Code, relating to state agencies and departments, and making an appropriation therefor.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 11806 of the Government Code is amended to read:

11806. Budget contracts entered into pursuant to Section 11805 shall be reviewed by the fiscal subcommittees of the Assembly and the Senate. Any budget contract proposed to be effective for the fiscal year beginning July 1 shall be submitted in draft form no later than January 31 to the fiscal subcommittees of the Assembly and the Senate.

SEC. 2. The Legislature hereby finds and declares that it is essential for the Controller to perform the following tasks:

(a) Prepare the annual financial statements for the state on the basis of generally accepted accounting principles. The annual financial statements are necessary for the marketing of state-issued securities.

(b) Modify computer programs in order to function correctly relative to the commencement of the year 2000. Existing programs established under prior industry-wide standards will not function properly for any dates beyond 1999.

(c) Expand the coding system used for funds and accounts created by the Legislature. The number of new funds and accounts have increased significantly in recent years. Expansion of the coding system, which is an essential component of the state's accounting system, is necessary to maintain proper fiscal controls and accountability for additional funds and accounts that may be established in the future.

SEC. 3. To the extent permitted by state law and provided the appropriation made pursuant to this act is consistent with the restrictions, if any, of the special funds, a total sum not to exceed five hundred ninety-three thousand five hundred dollars ($593,500) is hereby appropriated to the Controller from the special funds of the State Treasury for the 1994–95 fiscal year to pay the costs of the tasks identified in Section 2 that are attributable to the special funds. The Controller, subject to approval by the Director of Finance, shall determine the amount of the total appropriation that is to be funded by each special fund. Upon written authorization of the Director of Finance, the moneys appropriated pursuant to this act may be transferred by the Controller, as needed, from each special fund to augment the appropriation made in the 1994–95 Budget Act for the

support of the Controller.

It is the intent of the Legislature that costs incurred in subsequent fiscal years for the tasks identified in Section 2 shall be included in Budget Acts enacted for subsequent fiscal years.

CHAPTER 673

An act to amend Sections 44325, 44326, 44327, 44328, and 44830.3 of, to repeal and add Section 44329 of, and to repeal Section 44929.24 of, the Education Code, relating to certificated employees.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Recent studies have shown that California will continue to experience a shortage of qualified teachers.

(b) One of the most critical areas of the teacher shortage is in the field of special education.

(c) Section 44273 of the Education Code authorizes institutions of higher education to develop accelerated programs. However, the need for qualified special education teachers continues to exist.

(d) The district intern program established pursuant to Article 7.5 (commencing with Section 44325) of Chapter 2 of Part 25 of the Education Code has proven to be a highly successful alternative route to teacher certification.

(e) The creation of a district intern pilot program for special education teachers in the field of special education for pupils with mild and moderate disabilities will serve to address the shortage of special education teachers and provide school districts with a model for another means to recruit, prepare, and retain qualified special education teachers to teach pupils with mild and moderate disabilities.

SEC. 2. Section 44325 of the Education Code is amended to read:

44325. (a) The Commission on Teacher Credentialing shall issue district intern certificates authorizing persons employed by any school district that maintains kindergarten and grades 1 to 12, inclusive, or that maintains classes in bilingual education to provide classroom instruction to pupils in those grades and classes in accordance with the requirements of Section 44830.3. The commission also shall issue district intern certificates, as a pilot program, authorizing persons employed by the Los Angeles Unified School District to provide classroom instruction to pupils with mild and moderate disabilities in special education classes, in accordance with the requirements of Section 44830.3.

(b) Each district intern certificate shall be valid for a period of

two years. However, a certificate may be valid for three years if the intern is participating in a program that leads to the attainment of a specialist credential to teach pupils with mild and moderate disabilities, or four years if the intern is participating in a program that leads to the attainment of both a multiple subject or single subject teaching credential and a specialist credential to teach pupils with mild and moderate disabilities. Upon the recommendation of the school district, the commission may grant a one-year extension of the district intern certificate.

(c) The commission shall require each applicant for a district intern certificate to demonstrate that he or she meets the minimum qualifications for that certificate, including (1) the possession of a baccalaureate degree conferred by a regionally accredited institution of postsecondary education, (2) the successful passage of the state basic skills proficiency test administered under Sections 44252 and 44252.5, (3) the successful completion of the appropriate subject matter examination administered by the commission, or a commission-approved subject matter preparation program for the subject areas in which the district intern is authorized to teach, and (4) the oral language component of the assessment program leading to the bilingual-crosscultural language and academic development certificate for persons seeking a district intern certificate to teach bilingual education classes.

(d) The commission shall apply the requirements of Sections 44339, 44340, and 44341 to each applicant for a district intern certificate.

SEC. 3. Section 44326 of the Education Code is amended to read:

44326. (a) Persons holding district intern certificates issued by the commission under Section 44325 to teach in grades 9 to 12, inclusive, or in grades 6 to 8, inclusive, in a departmentalized program, or in departmentalized bilingual classes, shall only be authorized to teach in the subject areas in which they have completed an undergraduate academic major or minor.

(b) Persons holding district intern certificates issued by the commission under Section 44325 to teach in kindergarten and grades 1 to 8, inclusive, in a self-contained program or in self-contained bilingual classes who have completed an academic major or minor or a diversified or liberal arts degree that includes the subject matter coursework prescribed in Section 44314 shall be authorized to teach in those grades or classes.

(c) Prior to assignment to teach pupils with mild and moderate disabilities, persons holding district intern certificates issued by the commission under Section 44325 to teach those pupils shall meet the requirements of either subdivision (a) or (b) and shall teach in the capacity described in either subdivision (a) or (b) for one complete school year. Upon successful completion of that school year, any person holding that certificate may be assigned to teach special education pupils with mild and moderate disabilities.

(d) Each district intern shall be required to teach with the

assistance and guidance of certificated employees of the district who have been classified as mentor teachers under Article 4 (commencing with Section 44490) of Chapter 3, or with the assistance and guidance of certificated employees selected through a competitive process adopted by the governing board after consultation with the exclusive teacher representative unit or by personnel employed by institutions of higher education to supervise student teachers. Mentor teachers or other certificated employees shall possess valid certification at the same level or of the same type of credential as the district interns they serve.

SEC. 4. Section 44327 of the Education Code is amended to read:

44327. (a) On or before July 1, 1995, the commission, in consultation with participating school districts and other affected organizations, shall revise existing standards, and adopt additional standards, as necessary, related to the quality of the training, support, evaluation, and performance of district interns. The standards shall be appropriate for an alternative program of teacher recruitment, preparation, and certification. Each school district with a district intern program is responsible for maintaining appropriate records of the program so that the credit earned by each district intern is transferable to his or her academic record in the same manner as if the intern had participated in a college or university program. To the extent feasible, the standards shall also be equivalent to the standards of the commission for professional preparation programs in colleges and universities.

(b) Commencing July 1, 1989, the commission shall periodically review district intern programs on the basis of the standards adopted pursuant to subdivision (a).

(c) The commission is not authorized to approve district intern programs. On or before March 15, 1988, the commission shall inform all school districts in the state of the district intern program option, and shall disseminate its recommended standards to all districts. On or before March 15, 1995, the commission shall inform school districts of the current district intern program options.

SEC. 5. Section 44328 of the Education Code is amended to read:

44328. Unless the commission determines that substantial evidence exists that a person is unqualified to teach, upon the completion of successful service as a district intern pursuant to subdivision (b) of Section 44325, and upon the recommendation of the school district governing board, the commission shall award professional credentials to district interns in the same manner as applicants recommended for credentials by institutions that operate approved programs of professional preparation.

Notwithstanding paragraphs (1) and (2) of subdivision (a) of Section 44225, paragraphs (3), (4), (5), and (6) of subdivision (b) of Section 44259, paragraphs (1), (2), (3), and (4) of subdivision (c) of Section 44259, and Sections 44261, 44265, and 44335, it is the intent of the Legislature that upon recommendation by the governing board, district interns shall be issued professional credentials, rather than

preliminary credentials, upon the completion of successful service as a teacher pursuant to subdivision (b) of Section 44325 unless the governing board recommends, and the commission finds substantial evidence that the person is not qualified to teach. Notwithstanding Section 44261, the professional credential awarded to any district intern holding a certificate to teach bilingual classes shall be a basic teaching credential with a bilingual-crosscultural language and academic development emphasis. Notwithstanding Section 44265, the professional credential awarded to any district intern who holds a certificate to teach special education pupils with mild and moderate disabilities shall be a special education specialist instruction credential appropriate for that group of pupils.

It is the intent of the Legislature that institutions of higher education that operate approved programs of professional preparation work cooperatively with school districts that offer district intern programs for a special education specialist credential to apply the regular education coursework and fieldwork from the special education district intern program toward earning a multiple or single subject teaching credential through the institution.

SEC. 6. Section 44329 of the Education Code is repealed.

SEC. 7. Section 44329 is added to the Education Code, to read:

44329. The commission shall study the effectiveness of the certificated district intern program and shall report its findings to the Legislature on or before January 1, 1999. If the district intern pilot program in the Los Angeles Unified School District is successful, the report shall include recommendations regarding expanding the program statewide.

SEC. 8. Section 44830.3 of the Education Code is amended to read:

44830.3. (a) The governing board of any school district that maintains kindergarten or grades 1 to 12, inclusive, classes in bilingual education, or in the case of special education programs for pupils with mild and moderate disabilities, the Los Angeles Unified School District, may employ persons authorized by the Commission on Teacher Credentialing to provide service as district interns to provide instruction to pupils in those grades or classes as a classroom teacher. Prior to employing any person as a district intern, the governing board shall certify to the commission on the appropriate statement of need document provided by the commission that an insufficient number of fully credentialed teachers are available. The governing board shall require that each district intern be assisted and guided by a certificated employee of the school district who has been designated by the governing board as a mentor teacher pursuant to Article 4 (commencing with Section 44490) of Chapter 3 or by certificated employees selected through a competitive process adopted by the governing board after consultation with the exclusive teacher representative unit or by personnel employed by institutions of higher education to supervise student teachers. Mentor teachers or other certificated employees shall possess valid certification at the

same level, or of the same type, of credential as the district interns they serve.

(b) The governing board of each school district employing district interns shall develop and implement a professional development plan for district interns in consultation with an accredited institution of higher education offering an approved program of pedagogical preparation. The professional development plan shall include all of the following:

(1) Provisions for an annual evaluation of the district intern.

(2) As the governing board determines necessary, a description of courses to be completed by the district intern, if any, and a plan for the completion of preservice or other clinical training, if any, including student teaching.

(3) Mandatory preservice training for district interns tailored to the grade level or class to be taught, through either of the following options:

(A) One hundred twenty clock hours of preservice training and orientation in the aspects of child development and the methods of teaching the subject field or fields in which the district intern will be assigned, which training and orientation period shall be under the direct supervision of an experienced permanent teacher. At the conclusion of the preservice training period, the permanent teacher shall provide the district with information regarding the area that should be emphasized in the future training of the district intern.

(B) The successful completion, prior to service by the intern in any classroom, of six semester units of coursework from a regionally accredited college or university, designed in cooperation with the school district to provide instruction and orientation in the aspects of child development and the methods of teaching the subject field or fields in which the district intern will be assigned.

(4) Instruction in child development and the methods of teaching during the first semester of service for district interns teaching in kindergarten or grades 1 to 6, inclusive, including bilingual classes at those levels.

(5) Instruction in the culture and methods of teaching bilingual children during the first year of service for district interns teaching children in bilingual classes.

(6) Any other criteria which may be required by the governing board.

(7) In addition to the requirements set forth in paragraphs (1) to (6), inclusive, the professional development plan for district interns teaching in special education programs for pupils with mild and moderate disabilities also shall include 120 clock hours of mandatory preservice training and orientation, which shall include, but not be limited to, instruction in the development of exceptional children and the methods of teaching exceptional children.

(8) In addition to the requirements set forth in paragraphs (1) to (6), inclusive, the professional development plan for district interns teaching bilingual classes shall also include 120 clock hours of

mandatory training and orientation which shall include, but not be limited to, instruction in subject matter relating to bilingual-crosscultural language and academic development.

(9) The professional development plan for district interns teaching in special education programs for pupils with mild and moderate disabilities shall be based on the standards adopted by the commission as provided in subdivision (a) of Section 44327 of the Education Code.

(c) Each district intern and each district teacher assigned to supervise the district intern during the preservice period, shall be compensated for the preservice period pursuant to subparagraph (A) or (B) of paragraph (3). The compensation shall be that which is normally provided by each district for staff development or in-service activity.

(d) Upon completion of two years of service, or three years of service for interns participating in a program that leads to the attainment of a specialist credential to teach pupils with mild and moderate disabilities, or four years if the intern is participating in a program that leads to the attainment of both a multiple subject or single subject teaching credential and a specialist credential to teach pupils with mild and moderate disabilities, the governing board may recommend to the Commission on Teacher Credentialing that the district intern be credentialed in the manner prescribed by Section 44328.

SEC. 9. Section 44929.24 of the Education Code is repealed.

SEC. 10. The changes made in Sections 2 to 9, inclusive, of this act shall have no retroactive application or effect upon any individual who has entered any teacher trainee program or district intern program prior to January 1, 1995.

SEC. 11. The Legislature finds and declares that because of the shortage of special education teachers in the Los Angeles Unified School District, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 674

An act to amend Sections 18400.1 and 18502 of the Health and Safety Code, relating to mobilehome parks, and making an appropriation therefor.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 18400.1 of the Health and Safety Code is amended to read:

18400.1. (a) The enforcement agency shall enter and inspect all

mobilehome parks, as required under this part, at least once every seven years, to ensure enforcement of this part and the regulations adopted pursuant to this part. Any notices of violation of this part shall be issued pursuant to Chapter 3.5 (commencing with Section 18420).

(b) In developing its program for inspections, the enforcement agency shall give first priority to inspections of those mobilehome parks which it believes may have the most serious violations of this part.

(c) Nothing in this part shall be construed to allow the enforcement agency to issue a notice for a violation of existing laws or regulations which were not violations of the laws or regulations at the time the mobilehome park received its original permit to operate or at the time the manufactured home or mobilehome received its original installation permit, unless the enforcement agency determines that a condition of the park, manufactured home, or mobilehome endangers the life, limb, health, or safety of the public or occupants thereof.

(d) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

(e) Any local enforcement agency that relinquishes enforcement authority over to the department shall remit to the department fees collected pursuant to paragraph (2) of subdivision (c) of Section 18502 that have not been expended for purposes of that paragraph.

(f) Each local enforcement agency that has assumed enforcement authority and has collected fees pursuant to paragraph (2) of subdivision (b) of Section 18502, shall provide the department, prior to January 1, 1994, with a status report on its specific inspection program. The report shall include information on the number of parks and spaces in its jurisdiction, the number of parks and spaces that have been inspected, the number of parks and spaces that are scheduled for inspection, the number and types of notices of violations issued against the parks, the number and types of notices of violations issued against the residents, the number of notices of violations appealed, the amount of fees collected and expended for the purpose of the inspection program, and any program deviations that exist between the local enforcement agency and the department.

(g) The department shall, prior to January 1, 1995, submit a report to the Senate Committee on Local Government, Senate Select Committee on Mobilehomes, and the Assembly Committee on Housing and Community Development on the status of the mobilehome park inspection program. The report shall include information on the total number of parks and spaces in the state, the number of parks and spaces that have been inspected, the number of parks and spaces that are scheduled for inspection, the number of notices of violations issued against the parks, the number of notices of violations issued against the residents and the number of notices

of violations appealed, and the amount of fees collected and expended for the purpose of the inspection program. The report shall separate the information according to parks inspected by local enforcement agencies, parks inspected by the department, and total program activity. The report shall also include a discussion of any program deviations that exist between the local enforcement agency and the department, obstacles encountered while implementing the program and any recommendations for change to make it operate more efficiently and effectively should the program be extended after January 1, 1999.

SEC. 2. Section 18502 of the Health and Safety Code, as added by Chapter 1175 of the Statutes of 1990, is amended to read:

18502. Fees as applicable shall be submitted for permits:

(a) Fees for a permit to conduct any construction subject to this part as determined by the schedule of fees adopted by the department.

(b) Plan checking fees equal to one-half of the construction, plumbing, mechanical, and electrical permit fees, except that the minimum fee shall be ten dollars ($10).

(c) (1) Except for a temporary recreational vehicle park, an annual operating permit fee of twenty-five dollars ($25) and an additional two dollars ($2) per lot or two dollars ($2) per camping party for the maximum number of camping parties to be accommodated at any one time in an incidental camping area.

(2) Except for a special occupancy park, an additional annual fee of four dollars ($4) per lot shall be paid to the department or the local enforcement agency, as appropriate, at the time of payment of the annual operating fee. All revenues derived from this fee shall be used exclusively for the inspection of mobilehome parks and mobilehomes to determine compliance with the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200)) and any regulations adopted pursuant to the act.

(3) The Legislature hereby finds and declares that the health and safety of mobilehome park occupants is a matter of public interest and concern and that the fee paid pursuant to paragraph (2) shall be used exclusively for the inspection of mobilehome parks and mobilehomes to ensure that the living conditions of mobilehome park occupants meet the health and safety standards of this part and the regulations adopted pursuant thereto. Therefore, notwithstanding any other provisions of law or local ordinance, rule, regulation, or initiative measure to the contrary, the holder of the permit to operate the mobilehome park shall be entitled to directly charge one-half of the per lot additional annual fee specified herein to each homeowner, as defined in Section 798.9 of the Civil Code. In that event, the holder of the permit to operate the mobilehome park shall be entitled to directly charge each homeowner for one-half of the per lot additional annual fee at the next billing for the rent and other charges immediately following the payment of the additional fee to the department or local enforcement agency.

(d) Temporary recreational vehicle park operating permit fee of twenty-five dollars ($25), with no additional fee for the lots.

(e) Change in name fee or transfer of ownership or possession fee of ten dollars ($10).

(f) Duplicate permit fee or amended permit fee of ten dollars ($10).

(g) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 3. Section 18502 of the Health and Safety Code, as amended by Chapter 1072 of the Statutes of 1991, is amended to read:

18502. Fees as applicable shall be submitted for permits:

(a) Fees for a permit to conduct any construction subject to this part as determined by the schedule of fees adopted by the department.

(b) Plan checking fees equal to one-half of the construction, plumbing, mechanical, and electrical permit fees, except that the minimum fee shall be ten dollars ($10).

(c) Except for a temporary recreational vehicle park, an annual operating permit fee of twenty-five dollars ($25) and an additional two dollars ($2) per lot or two dollars ($2) per camping party for the maximum number of camping parties to be accommodated at any one time in an incidental camping area.

(d) Temporary recreational vehicle park operating permit fee of twenty-five dollars ($25), with no additional fee for the lots.

(e) Change in name fee or transfer of ownership or possession fee of ten dollars ($10).

(f) Duplicate permit fee or amended permit fee of ten dollars ($10).

(g) This section shall become operative on January 1, 1999.

CHAPTER 675

An act to amend Sections 233, 400, 10500, 12110, 12801.5, 12814.5, 13002, 25104, and 25108 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 233 of the Vehicle Code is amended to read:

233. (a) Except as provided in subdivision (b), a "bus" is any vehicle, including a trailer bus, designed, used, or maintained for carrying more than 15 persons including the driver.

(b) A vehicle designed, used, or maintained for carrying more than 10 persons, including the driver, which is used to transport persons for compensation or profit, or is used by any nonprofit

organization or group, is also a bus.

(c) This section does not alter the definition of a schoolbus, school pupil activity bus, general public paratransit vehicle, farm labor vehicle, or youth bus.

(d) A vanpool vehicle is not a bus.

SEC. 2. Section 400 of the Vehicle Code, as amended by Section 1.5 of Chapter 594 of the Statutes of 1993, is amended to read:

400. (a) A "motorcycle" is any motor vehicle having a seat or saddle for the use of the rider, designed to travel on not more than three wheels in contact with the ground, and weighing less than 1,500 pounds.

(b) A motor vehicle that has four wheels in contact with the ground, two of which are a functional part of a sidecar, is a motorcycle if the vehicle otherwise comes within the definition of subdivision (a).

(c) A motor vehicle that is electrically powered, has a maximum speed of 45 miles per hour, and weighs less than 2,500 pounds, is a motorcycle if the vehicle otherwise comes within the definition of subdivision (a).

(d) A farm tractor is not a motorcycle.

(e) A motor vehicle that otherwise meets the requirements of subdivision (a), has a partially or completely enclosed seating area for the driver and passenger, and is used by local public agencies for the enforcement of parking control provisions, is not a motorcycle. A motor vehicle described in this subdivision shall comply with the applicable sections of this code imposing equipment installation requirements on motorcycles.

(f) This section shall become inoperative if the Director of Transportation receives notice of a determination by the National Highway Traffic Safety Administration that the implementation of that provision would subject California to a transfer of funds pursuant to Section 153 of Title 23 of the United States Code.

(g) Upon receipt of a notice of determination from the National Highway Traffic Safety Administration pursuant to subdivision (f), the Director of Transportation shall submit the notice of determination to the Secretary of State, and this section shall be repealed upon receipt of that notice by the Secretary of State.

(h) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 3. Section 10500 of the Vehicle Code is amended to read:

10500. (a) Every peace officer, upon receiving a report based on reliable information that any vehicle registered under this code has been stolen, taken, or driven in violation of Section 10851, or that a leased or rented vehicle has not been returned within five days after its owner has made written demand for its return, by certified or registered mail, following the expiration of the lease or rental agreement, or that license plates for any vehicle have been lost or stolen, shall, immediately after receiving that information, report the

information to the Department of Justice Stolen Vehicle System. An officer, upon receiving information of the recovery of any vehicle described in this subdivision, or of the recovery of plates which have been previously reported as lost or stolen, shall immediately report the fact of the recovery to the Department of Justice Stolen Vehicle System. At the same time, the recovering officer shall advise the Department of Justice Stolen Vehicle System and the original reporting police agency of the location and condition of the vehicle or license plates recovered. The original reporting police agency, upon receipt of the information from the recovering officer, shall, immediately attempt to notify the reporting party by telephone, if the telephone number of the reporting party is available or readily accessible, of the location and condition of the recovered vehicle. If the reporting party's telephone number is unknown, or notification attempts were unsuccessful, the original reporting police agency shall notify the reporting party by placing, in the mail, a notice providing the location and condition of the recovered vehicle. This written notice shall be mailed within 24 hours of the original reporting police agency's receipt of the information of the recovery of the vehicle, excluding holidays and weekends.

(b) If the recovered vehicle is subject to parking or storage charges, Section 10652.5 applies.

SEC. 4. Section 12110 of the Vehicle Code is amended to read:

12110. (a) Except as provided in subdivision (b), no towing service shall provide and no person or public entity shall accept any direct or indirect commission, gift, or any compensation whatever from a towing service in consideration of arranging or requesting the services of a tow truck. As used in this section, "arranging" does not include the activities of employees or principals of a provider of towing services in responding to a request for towing services.

(b) Subdivision (a) does not preclude a public entity otherwise authorized by law from requiring a fee in connection with the award of a franchise for towing vehicles on behalf of that public entity. However, the fee in such cases shall not exceed the amount necessary to reimburse the public entity for its actual and reasonable costs incurred in connection with the towing program.

(c) Any towing service or any employee of a towing service that accepts or agrees to accept any money or anything of value from a repair shop and any repair shop or any employee of a repair shop that pays or agrees to pay any money or anything of value as a commission, referral fee, inducement, or in any manner a consideration, for the delivery or the arranging of a delivery of a vehicle, not owned by the repair shop or towing service, for the purpose of storage or repair, is guilty of a misdemeanor. Nothing in this subdivision prevents a towing service from towing a vehicle to a repair shop owned by the same company that owns the towing service.

SEC. 5. Section 12801.5 of the Vehicle Code is amended to read:

12801.5. (a) Notwithstanding any other provision of law, the

department shall require every applicant for an original driver's license or identification card to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law.

(b) The department shall not issue an original driver's license or identification card to any person who does not submit satisfactory proof that the applicant's presence in the United States is authorized under federal law.

(c) The department shall adopt regulations to carry out the purposes of this section, including procedures for, but not limited to, (1) verifying that the applicant's presence in the United States is authorized under federal law, (2) issuance of temporary licenses pending verification of status, and (3) appeals hearings from denials of licenses, temporary licenses, or identification cards.

(d) On January 10, 1995, and on January 10 of each subsequent year thereafter, the department shall submit a supplemental budget report to the Governor and the Legislature detailing the costs of verifying the citizenship or legal residency of applicants for driver's licenses and identification cards, in order for the state to request reimbursement from the federal government.

(e) Notwithstanding Section 40300 or any other provision of law, a peace officer shall not detain or arrest a person solely on the belief that the person is an unlicensed driver, unless the officer has reasonable cause to believe the person driving is under the age of 16 years.

(f) The inability to obtain a driver's license pursuant to this section does not abrogate or diminish in any respect the legal requirement of every driver in this state to obey the motor vehicle laws of this state, including laws with respect to licensing, motor vehicle registration, and financial responsibility.

SEC. 6. Section 12814.5 of the Vehicle Code is amended to read:

12814.5. (a) The director may establish a program to evaluate the traffic safety and other effects of renewing driver's licenses by mail. The director may renew by mail driver's licenses for licensees not holding a probationary license, and whose records, for the two years immediately preceding the determination of eligibility for the renewal, show no notification of a violation of subdivision (a) of Section 40509, a total violation point count not greater than one as determined in accordance with Section 12810, no suspension of the driving privilege pursuant to Section 13353.2, and no refusal to submit to or complete chemical testing pursuant to Section 13353 or 13353.1.

(b) The director may terminate the renewal by mail program authorized by this section at any time the department determines that the program has an adverse impact on traffic safety.

(c) No renewal by mail shall be granted to any person who is 70 years of age or older.

(d) The department shall charge a fee of twelve dollars ($12) for each license renewal granted pursuant to subdivision (a).

(e) The department shall notify each licensee granted a renewal by mail pursuant to this section of major changes to the Vehicle Code affecting traffic laws occurring during the prior four-year period.

(f) The department shall not renew a driver's license by mail if the license has been previously renewed by mail two consecutive times for four-year periods.

SEC. 7. Section 13002 of the Vehicle Code is amended to read:

13002. (a) Except as otherwise provided in subdivision (b), every identification card shall expire, unless canceled earlier, on the sixth birthday of the applicant following the date of application for the identification card. Renewal of any identification card, other than a senior citizen identification card, shall be made for a term which shall expire on the sixth birthday of the applicant following expiration of the identification card renewed, unless surrendered earlier. Any application for renewal received after 90 days after expiration of the identification card, including a senior citizen identification card, shall be considered the same as an application for an original identification card. The department shall, at the end of six years and six months after the issuance or renewal of an identification card, other than a senior citizen identification card, destroy any record of the card if it has expired and has not been renewed.

(b) Every senior citizen identification card issued pursuant to subdivision (b) of Section 13000 shall expire, unless canceled earlier, on the 10th birthday of the applicant following the date of application for the identification card. Renewal of any senior citizen identification card shall be made for a term which shall expire on the 10th birthday of the applicant following expiration of the senior citizen identification card renewed, unless surrendered earlier. The department shall, at the end of 10 years and six months after the issuance or renewal of a senior citizen identification card, destroy any record of the card if it has expired and has not been renewed.

(c) An identification card may be issued to a person in exchange for the person's driver's license which is surrendered to the department for either of the following reasons:

(1) The person has a physical or mental condition and requests cancellation of the driver's license.

(2) The department has revoked the person's driving privilege based on the person's physical or mental condition.

That card shall be issued without the payment of any additional fee.

(d) Notwithstanding subdivisions (a) and (b), the department may adjust the expiration date of any identification card issued pursuant to this code so that the date does not exceed the expiration date of a document submitted pursuant to subdivision (a) of Section 12801.5.

SEC. 8. Section 25104 of the Vehicle Code is amended to read:

25104. Any vehicle or equipment that requires a permit issued pursuant to Article 6 (commencing with Section 35780) of Chapter

5 of Division 15 because it is wider than permitted under Chapter 2 (commencing with Section 35100) of Division 15 shall display a red flag or cloth not less than 16 inches square at the extreme left front and left rear of the vehicle or equipment, if the vehicle or equipment is being operated other than during darkness.

SEC. 9. Section 25108 of the Vehicle Code is amended to read:

25108. (a) Any motor vehicle may be equipped with not more than two amber turn signal pilot indicators mounted on the exterior. The light output from any indicator shall not exceed five candlepower unless provision is made for operating the indicator at reduced intensity during darkness in which event the light output shall not exceed five candlepower during darkness or 15 candlepower at any other time. The center of the beam shall be projected toward the driver.

(b) Any vehicle may be equipped with pilot indicators visible from the front to monitor the functioning or condition of parts essential to the operation of the vehicle or of equipment attached to the vehicle which is necessary for protection of the cargo or load. The pilot indicators shall be steady burning, having a projected lighted lens area of not more than three-quarters of a square inch and have a light output of no more than five candlepower. The pilot indicator may be of any color except red.

(c) Other exterior pilot indicators of any color may be used for monitoring exterior lighting devices, provided that the area of each indicator is less than 0.20 square inches, the intensity of each indicator does not exceed 0.10 candlepower, and the color red is not visible to the front.

(d) Any towed vehicle may be equipped with an exterior mounted pilot lamp used only to indicate the functional status of an antilock braking system when the following conditions are met:

(1) The indicator lamp is designed and located so that it will be readily visible, with the assistance of a rearview mirror if necessary, to the driver of the towing motor vehicle.

(2) The indicator lamp has a light source not exceeding five candlepower. The light shall not show to the sides or rear of the vehicle and the indicator lamp may emit any color except red.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000),

reimbursement shall be made from the State Mandates Claim Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 676

An act to amend Section 832.6 of the Penal Code, relating to peace officers.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 832.6 of the Penal Code is amended to read:

832.6. (a) Every person deputized or appointed, as described in subdivision (a) of Section 830.6, shall have the powers of a peace officer only when the person is any of the following:

(1) (A) Deputized or appointed pursuant to paragraph (1) of subdivision (a) of Section 830.6 and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state, whether or not working alone, and the person has completed the basic training prescribed by the Commission on Peace Officer Standards and Training. For the level I reserve officers appointed pursuant to this subparagraph after January 1, 1997, the basic training shall meet the minimum requirements established by the commission for deputy sheriffs and police officers. A law enforcement agency may request an exemption from this training requirement if the agency has policies approved by the commission limiting duties of level I reserve officers and these level I reserve officers satisfy other training requirements established by the commission. All level I reserve officers appointed pursuant to this subparagraph shall satisfy the continuing professional training requirement prescribed by the commission.

(B) A person deputized or appointed pursuant to paragraph (2) of subdivision (a) of Section 830.6 shall have the powers of a peace officer when assigned to the prevention and detection of crime and the general enforcement of the laws of this state, whether or not working alone, and the person has completed the basic training course for deputy sheriffs and police officers prescribed by the Commission on Peace Officer Standards and Training. Level I reserve officers appointed pursuant to this subparagraph shall satisfy the continuing professional training requirement prescribed by the commission.

(2) Assigned to the prevention and detection of crime and the general enforcement of the laws of this state while under the

immediate supervision of a peace officer possessing a basic certificate issued by the Commission on Peace Officer Standards and Training, the person is engaged in a field training program approved by the Commission on Peace Officer Standards and Training, and the person has completed the course required by Section 832 and any other training prescribed by the commission.

(3) Deployed and authorized only to carry out limited duties not requiring general law enforcement powers in their routine performance. Those persons shall be permitted to perform these duties only under the direct supervision of a peace officer possessing a basic certificate issued by the commission, and shall have completed the training required under Section 832 and any other training prescribed by the commission for those persons. Notwithstanding the provisions of this paragraph, a level III reserve officer may perform search and rescue, personnel administration support, community public information services, communications technician services, and scientific services, which do not involve direct law enforcement without supervision.

(4) Assigned to the prevention and detection of a particular crime or crimes or to the detection or apprehension of a particular individual or individuals while working under the supervision of a California peace officer in a county adjacent to the state border who possesses a basic certificate issued by the Commission on Peace Officer Standards and Training, and the person is a law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and has completed the basic training required for peace officers in his or her state.

This training shall fully satisfy any other training requirements required by law, including those specified in Section 832.

In no case shall a peace officer of an adjoining state provide services within a California jurisdiction during any period in which the regular law enforcement agency of the jurisdiction is involved in a labor dispute.

(b) Notwithstanding subdivision (a), a person who is issued a level I reserve officer certificate before January 1, 1981, shall have the full powers and duties of a peace officer as provided by Section 830.1 if so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, if the appointing authority determines the person is qualified to perform general law enforcement duties by reason of the person's training and experience. Persons who were qualified to be issued the level I reserve officer certificate before January 1, 1981, and who state in writing under penalty of perjury that they applied for but were not issued the certificate before January 1, 1981, may be issued the certificate before July 1, 1984. For purposes of this section, certificates so issued shall be deemed to have the full force and effect of any level I reserve officer certificate issued prior to January 1, 1981.

(c) In carrying out this section, the commission:

(1) May use proficiency testing to satisfy reserve training

standards.

(2) Shall provide for convenient training to remote areas in the state.

(3) Shall establish a professional certificate for reserve officers as defined in paragraph (1) of subdivision (a) and may establish a professional certificate for reserve officers as defined in paragraphs (2) and (3) of subdivision (a).

(4) Shall facilitate the voluntary transition of reserve officers to regular officers with no unnecessary redundancy between the training required for level I and level II reserve officers.

(5) Shall develop a supplemental course for existing level I reserve officers desiring to satisfy the basic training course for deputy sheriffs and police officers.

(d) In carrying out paragraphs (1) and (3) of subdivision (c), the commission may establish and levy appropriate fees, provided the fees do not exceed the cost for administering the respective services. These fees shall be deposited in the Peace Officers' Training Fund established by Section 13520.

(e) The commission shall include an amount in its annual budget request to carry out this section.

SEC. 2. The Legislature has the following intent with regard to the changes made by this bill to Section 832.6 of the Penal Code during the 1993–94 Regular Session:

(a) To make the training requirements of level I reserve officers consistent with those of regular police officers or deputy sheriffs.

(b) To recognize that all level I reserve officers and regular police officers or deputy sheriffs have identical authority and responsibilities while on duty, and that it is necessary that these officers have the same minimum training requirements consisting of the POST basic course for entry level training and a continuing professional training requirement as determined by the commission.

(c) To ensure the smooth and voluntary transition of reserve officers to regular officers without unnecessary redundancy in the training.

(d) To encourage the Commission on Peace Officer Standards and Training to develop a supplemental course for existing level I reserve officers with the advice and assistance of reserve officer associations, reserve coordinators, local law enforcement agencies, and training providers.

(e) To ensure that the Commission on Peace Officer Standards and Training will make every possible attempt to certify or approve additional extended format academy providers and convenient locations, and approve other modularized training formats for level I reserve officers to satisfy the basic training requirements for regular deputy sheriffs and police officers.

CHAPTER 677

An act to add Section 2882.5 to the Public Utilities Code, relating to telephones.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 2882.5 is added to the Public Utilities Code, to read:

2882.5. (a) It is the intent of the Legislature to create a billing standard for telephone corporations that accurately reflects actual usage by the consumer.

(b) The commission shall investigate the advantages and disadvantages of requiring telephone corporations to bill in increments shorter than one minute. The investigation shall include an opportunity for public comment. The commission shall report to the Legislature on its findings and recommendations not later than December 31, 1995.

CHAPTER 678

An act to amend Section 5768 of, and to add and repeal Section 5675 of, the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 5675 is added to the Welfare and Institutions Code, to read:

5675. (a) Subject to Section 5768, Placer County and up to six other counties may establish a pilot project for up to four years, to develop a shared mental health rehabilitation center for the provision of community care and treatment for persons with mental disorders who are placed in a state hospital or another health facility because no community placements are available to meet the needs of these patients. Participation in this pilot project by the counties shall be on a voluntary basis.

(b) (1) The department shall establish, by emergency regulation, the standards for the pilot project, and monitor the compliance of the counties with those standards. Placer County, in consultation with the department, shall be responsible for program monitoring.

(2) The department, in conjunction with the county mental health directors, shall report to the Legislature within three years of

the commencement of operation of the facilities authorized pursuant to this section regarding the progress and cost-effectiveness demonstrated by the pilot project. The report shall evaluate whether the pilot project is effective based on clinical indicators, and is successful in preventing future placement of its clients in state hospitals or other long-term health facilities, and shall report whether the cost of care in the pilot facilities is less than the cost of care in state hospitals or in other long-term health facility options. The evaluation report shall include, but not be limited to, an evaluation of the selected method and the effectiveness of the pilot project staffing, and an analysis of the effectiveness of the pilot project at meeting all of the following objectives:

(A) That the clients placed in the facilities show improved global assessment scores, as measured by preadmission and postadmission tests.

(B) That the clients placed in the facilities demonstrate improved functional behavior as measured by preadmission and postadmission tests.

(C) That the clients placed in the facilities have reduced medication levels as determined by comparison of preadmission and postadmission records.

(3) The pilot project shall be deemed successful if it demonstrates both of the following:

(A) The costs of the program are no greater than public expenditures for providing alternative services to the clients served by the project.

(B) That the benefit to the clients, as described in this subdivision, is improved by the project.

(c) The project shall be subject to existing regulations of the State Department of Health Services applicable to health facilities that the State Department of Mental Health deems necessary for fire and life safety of persons with mental illness.

(d) The department shall consider projects proposed by other counties under Section 5768.

(e) (1) Clients served by the project shall have all of the protections and rights guaranteed to mental health patients pursuant to the following provisions of law:

(A) Part 1 (commencing with Section 5000) and this part.

(B) Article 5 (commencing with Section 835), Article 5.5 (commencing with Section 850), and Article 6 (commencing with Section 860) of Chapter 4 of Title 9 of the California Code of Regulations.

(2) Clients shall have access to the services of a county patients' rights advocates as provided in Chapter 6.2 (commencing with Section 5500) of Part 1.

(f) This section shall remain in effect only until January 1, 1999, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 2. Section 5768 of the Welfare and Institutions Code is

amended to read:

5768. (a) Notwithstanding any other provision of law, except as to requirements relating to fire and life safety of persons with mental illness, the department, in its discretion, may permit new programs to be developed and implemented without complying with licensure requirements established pursuant to existing state law.

(b) Any program developed and implemented pursuant to subdivision (a) shall be reviewed at least once each six months, as determined by the department.

(c) The department may establish appropriate licensing requirements for such new programs upon a determination that such programs should be continued.

(d) Within four years, any program shall require a licensure category if it is to be continued. However, in the event that any agency other than the department is responsible for developing a licensure category and fails to do so within the four years, the program may continue to be developed and implemented pursuant to subdivisions (a) and (b) until such time that the licensure category is established.

(e) (1) A nongovernmental entity proposing a program shall submit a program application and plan to the local mental health director that describes at least the following components: clinical treatment programs, activity programs, administrative policies and procedures, admissions, discharge planning, health records content, health records service, interdisciplinary treatment teams, client empowerment, patient rights, pharmaceutical services, program space requirements, psychiatric and psychological services, rehabilitation services, restraint and seclusion, space, supplies, equipment, and staffing standards. If the local mental health director determines that the application and plan are consistent with local needs and satisfactorily address the above components, he or she may approve the application and plan and forward them to the department.

(2) Upon the department's approval, the local mental health director shall implement the program and shall be responsible for regular program oversight and monitoring. The department shall be notified in writing of the outcome of each review of the program by the local mental health director, or his or her designee, for compliance with program requirements. The department shall retain ultimate responsibility for approving the method for review of each program, and the authority for determining the appropriateness of the local program's oversight and monitoring activities.

(f) Governmental entities proposing a program shall submit a program application and plan to the department that describes at least the components described in subdivision (e). Upon approval, the department shall be responsible for program oversight and monitoring.

(g) Implementation of a program shall be contingent upon the

department's approval, and the department may reject applications or require such modifications as it deems necessary. The department shall respond to each proposal within 90 days of receipt.

(h) The State Department of Health Services shall allow an applicant approved by the department with a current health facility license to place its license in suspense for a period of four years. At that time the department, in consultation with the State Department of Health Services shall determine the most appropriate licensure for the program, pursuant to subdivisions (c) and (d).

(i) The department shall submit an evaluation to the Legislature of all pilot projects authorized pursuant to this section within three years of the commencement of operation of the pilot project, determining the effectiveness of that program or facility, or both, based on, but not limited to, changes in clinical indicators with respect to client functions.

SEC. 3. The Director of Mental Health shall promulgate emergency regulations necessary to implement this act in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of initial emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. Regulations adopted pursuant to this section shall remain in effect for no more than 180 days.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 679

An act to amend Section 19578 of the Business and Professions Code, relating to horseracing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 19578 of the Business and Professions Code is amended to read:

19578. (a) It is the intent of the Legislature that the board contract with the Regents of the University of California to provide equine drug testing. It is further the intent of the Legislature that to the extent that resources are available, the California Veterinary Diagnostic Laboratory System perform studies that may lead to the development of alternative or improved drug testing techniques.

(b) An Equine Drug Testing Laboratory may be constructed at the University of California, Davis campus.

(c) If constructed, the Equine Drug Testing Laboratory shall be located at the University of California at Davis in order to take advantage of the expertise of the veterinary specialists at that campus' School of Veterinary Medicine. The laboratory shall be a part of the California Veterinary Diagnostic Laboratory System. Any capital outlay expenditures for the Equine Drug Testing Laboratory shall comply with Section 13332.11 of the Government Code.

(d) Funds collected under Article 9.2 (commencing with Section 19605) and Article 9.5 (commencing with Section 19610) for purposes of the California Veterinary Diagnostic Laboratory System and the Equine Research Laboratory shall be deposited in the California Veterinary Diagnostic Laboratory System and Equine Research Laboratory Account in the Fair and Exposition Fund. Funds deposited in that account constitute trust funds and shall be held in trust and may be expended only for the purposes for which those funds are authorized to be expended pursuant to this section. The funds designated for the California Veterinary Diagnostic Laboratory System shall be distributed to that system and shall be used to fund the construction costs, equipment costs, and for the repayment of the principal of, interest on, and costs of issuance of, and as security, including any coverage factor, pledged to the payment of, bonds issued or other debt service or expense, including repayment of any advances made or security required by any provider of credit enhancement or liquidity for those bonds or other indebtedness, or expense of maintaining that credit enhancement or liquidity, incurred for the purpose of constructing an Equine Drug Testing Laboratory, and for the operating costs of the Equine Drug Testing Laboratory. The funds designated for the Equine Research

Laboratory shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis.

(e) Title to the Equine Drug Testing Laboratory shall vest in the Regents of the University of California. The laboratory shall be used in a manner that is consistent with Section 19577 and this section.

(f) The board shall contract to provide compensation for an equine medical director who shall advise the Equine Drug Testing Laboratory and be appointed by the Dean of the School of Veterinary Medicine under applicable university hiring rules with the advice of the board. The equine medical director shall be a member of the scientific advisory committee to the Equine Drug Testing Laboratory, and act as the primary advisor to the board on all matters relating to medication and drug testing, the practice of veterinary medicine within the areas regulated by the board, and the health and safety of horses within the enclosure.

(g) The budget for equine drug testing to be performed by the California Veterinary Diagnostic Laboratory System pursuant to Section 19577 shall be established as a permanent line item in the budget of the board. Operating budget requests shall be submitted annually by the university, and the board shall transfer funds appropriated for the operation of the laboratory and for equipment, in accordance with the contract, to the university.

(h) If the Equine Drug Testing Laboratory is constructed, the board and the University of California may expand the services provided by the laboratory to the board in a manner that is mutually agreeable and is consistent with Section 19577 and this section.

(i) Funds mentioned in subdivision (d) may be used to finance the preparation of preliminary plans and working drawings for the construction of the Equine Drug Testing Laboratory at the University of California, Davis.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to resolve any confusion concerning the distribution of funds collected for purposes of the California Veterinary Diagnostic Laboratory System and the Equine Research Laboratory at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 680

An act to amend Section 1940 of the Civil Code, and to amend Section 602 of the Penal Code, relating to hiring of real property.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 1940 of the Civil Code is amended to read:

1940. (a) Except as provided in subdivision (b), this chapter shall apply to all persons who hire dwelling units located within this state including tenants, lessees, boarders, lodgers, and others, however denominated.

(b) The term "persons who hire" shall not include a person who maintains either of the following:

(1) Transient occupancy in a hotel, motel, residence club, or other facility when the transient occupancy is or would be subject to tax under Section 7280 of the Revenue and Taxation Code. The term "persons who hire" shall not include a person to whom this paragraph pertains if the person has not made valid payment for all room and other related charges owing as of the last day on which his or her occupancy is or would be subject to tax under Section 7280 of the Revenue and Taxation Code.

(2) Occupancy at a hotel or motel where the innkeeper retains a right of access to and control of the dwelling unit and the hotel or motel provides or offers all of the following services to all of the residents:

(A) Facilities for the safeguarding of personal property pursuant to Section 1860.

(B) Central telephone service subject to tariffs covering the same filed with the California Public Utilities Commission.

(C) Maid, mail, and room services.

(D) Occupancy for periods of less than seven days.

(E) Food service provided by a food establishment, as defined in Section 27520 of the Health and Safety Code, located on or adjacent to the premises of the hotel or motel and owned or operated by the innkeeper or owned or operated by a person or entity pursuant to a lease or similar relationship with the innkeeper or person or entity affiliated with the innkeeper.

(c) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

(d) Nothing in this section shall be construed to limit the application of any provision of this chapter to tenancy in a dwelling unit unless such provision is so limited by its specific terms.

SEC. 2. Section 602 of the Penal Code is amended to read:

602. Except as provided in Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any such lands, whether covered by water or not, without the license of the owner or legal occupant; or destroying or removing, or causing to be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any such lands.

(h) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(i) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the

owner of the lands or the owner's agent, or the person in lawful possession.

(j) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(k) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(*l*) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(m) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process.

(n) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property

is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(o) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(p) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances are such as to indicate to a reasonable person that the person has no apparent lawful business to pursue.

(q) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(r) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For purposes of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration, be exempt from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(s) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the

manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(t) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision the following definitions shall control:

(A) "Airport operations area" means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) "Authorized personnel" means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) "Airport" means any facility whose function is to support commercial aviation.

(u) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

CHAPTER 681

An act to amend Sections 44235, 44242.5, 44244, 44270.1, and 44421 of, and to add Sections 44242.7 and 44421.1 to, the Education Code, relating to school employees, and making an appropriation therefor.

[Approved by Governor September 19, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. Section 44235 of the Education Code is amended to read:

44235. Fees shall be levied by the commission for the issuance and renewal of teaching and service credentials. Commencing January 1, 1987, the fee for the issuance and renewal of teaching and service credentials shall be fifty dollars ($50). In subsequent years, the commission may set a different fee, but in no case shall a fee exceed seventy dollars ($70) without express legislative approval.

A single fee, not to exceed the charge for a single supplemental credential, shall be charged for all supplemental credentials applied for at the same time.

Annually, as part of the budget review process, the Department of Finance shall recommend to the Legislature an appropriate credential fee sufficient to generate revenues necessary to support the operating budget of the commission plus a prudent reserve, as determined by the Department of Finance pursuant to subdivision (b) of Section 44234.

SEC. 2. Section 44242.5 of the Education Code is amended to read:

44242.5. (a) Each allegation of an act or omission by an applicant for, or holder of, a credential for which he or she may be privately admonished, publicly reproved, or for which his or her application or credential may be denied, suspended, or revoked shall be presented to the Committee of Credentials.

(b) The committee has jurisdiction to commence an investigation upon receipt of any of the following:

(1) Official records of the Department of Justice, of any law enforcement agency, of any state or federal court, and of any other agency of this state or another state.

(2) An affidavit or declaration signed by person or persons with personal knowledge of the acts alleged to constitute misconduct.

(3) A statement from an employer notifying the commission that a credential holder has been dismissed, has been suspended for more than 10 days, has resigned, or has otherwise left employment because of the allegation of misconduct.

(4) A notice from an employer that a complaint was filed with the school district alleging sexual misconduct by a credential holder. Results of an investigation by the committee based on this paragraph

shall not be considered for action by the committee unless there is evidence presented to the committee in the form of a written or oral declaration under penalty of perjury that confirms the personal knowledge of the declarant regarding the acts alleged to constitute misconduct.

(c) The committee shall investigate each allegation. Upon commencement of an investigation the committee shall investigate all alleged misconduct and the circumstances in mitigation and aggravation. The investigation shall include, but not be limited to, all of the following:

(1) Investigation of the fitness and competence of the applicant or credential holder to perform the duties authorized by the credential for which he or she has applied or that he or she presently holds.

(2) Preparation of a summary of the applicable law, a summary of the facts, contested and uncontested, and a summary of any circumstances in aggravation or mitigation of the allegation.

(3) Conduct of a meeting or hearing, in accordance with Section 44244, to consider allegations against an applicant or credential holder.

(4) Determination of probable cause for private admonition or public reproof or for denial, suspension, or revocation of the credential. If the allegation is for unprofessional or immoral conduct, the committee shall, in any meeting or hearing conducted pursuant to paragraph (4) to determine probable cause, permit the employer of the credential holder to be present while testimony is taken. If the allegation of unprofessional or immoral conduct involves sexual abuse, the employer shall be examined in the meeting for any relevant evidence relating to the sexual abuse.

(A) If the committee determines that probable cause for private admonition or public reproof, or for denial, suspension, or revocation of the credential does not exist, the committee shall terminate the investigation.

(B) If the committee determines that probable cause for private admonition or public reproof, or denial, suspension, or revocation of the credential exists, the committee shall initiate an adjudicatory hearing, as prescribed by Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code, by filing an accusation or statement of issues.

(d) The committee has jurisdiction to commence a meeting or hearing pursuant to Section 44244 upon receipt of any of the following:

(1) Official records of any state or federal court that reflect a conviction or plea, including a plea of nolo contendere, to any criminal offense.

(2) An affidavit or declaration signed by a person or persons with personal knowledge of the acts alleged to constitute misconduct.

(3) A statement described in paragraph (3) of subdivision (b).

(4) Official records of any governmental licensing entity that

reflect an administrative proceeding or investigation, otherwise authorized by law or regulation, which has become final.

(e) (1) Upon completion of its investigation, the committee shall report its actions and decisions to the commission, including its findings as to probable cause, and if probable cause exists, its recommendations as to private admonition or public reproof, or denial, suspension, or revocation of the credential. The findings shall describe the committee's concurrence or nonconcurrence with the facts reported in the investigation, the committee's determination as to what acts of misconduct by the credential holder or applicant occurred, and the relationship between the applicant or credential holder's misconduct and that person's ability or fitness to perform the duties for which he or she is certified or seeking certification.

(2) The findings shall be available, upon its request, to the employing or last known employing school district, or, where adverse action is recommended by the committee and a request is made within one year from the date the committee makes a recommendation, to a school district providing verification that the credential holder has applied for employment in the district. The findings shall, for all purposes, remain confidential and limited to school district personnel in a direct supervisory capacity in relation to the person investigated. Any person who otherwise releases findings received from the committee or the commission, absent a verified release signed by the person who is the subject of the investigation, shall be guilty of a misdemeanor.

(3) The findings shall not contain any information that reveals the identity of persons other than the person who is the subject of the investigation.

SEC. 3. Section 44242.7 is added to the Education Code, to read:

44242.7. (a) Any allegation of an act or omission by the holder of a credential, except for an allegation that involves sexual misconduct with a minor or recurring conduct resulting in a pattern of misconduct, shall be presented to the Committee of Credentials within four years from the date of the alleged act or omission, or within one year from the date the act or omission should reasonably have been discovered.

(b) The Commission on Teacher Credentialing shall adopt regulations specifying conduct that is considered recurring conduct that results in a pattern of misconduct as set forth in subdivision (a).

SEC. 4. Section 44244 of the Education Code is amended to read:

44244. (a) At least 30 days prior to any Committee of Credentials meeting or hearing at which the application or credential of a certified employee is to be considered, the committee shall notify the certified employee of the specific allegations of misconduct for which the application or credential may be denied, suspended, or revoked, or for which the employee may be privately admonished or publicly reproved, in ordinary and concise language setting forth the acts or omissions charged and the statutes or rules violated. Supplemental allegations of misconduct shall be sent to the certified

employee at least 30 days prior to the meeting or hearing. The portions of the investigation of the original or supplemental allegations which constitute the basis for the allegations shall be open to inspection and copying by the employee and his or her attorney. The statement of the allegations shall inform the employee that the allegations, if true, are sufficient to cause his or her application or credential to be denied, suspended, or revoked, or to cause him or her to be privately admonished or publicly reproved.

(b) The investigation shall be commenced within 21 days after all allegations of misconduct have been filed with the committee and a meeting or hearing shall be scheduled no later than six months thereafter for the purpose of making a determination either that no adverse action shall be taken; that the allegations are sufficient to cause his or her application or credential to be denied, suspended, or revoked; or that the allegations are sufficient to cause him or her to be privately admonished or publicly reproved. All testimony before the committee shall be verified under penalty of perjury by oath or affirmation. The chairperson of the committee may administer the oath or affirmation. The chairperson may designate staff to administer the oath or affirmation for statements taken during the investigation of allegations of misconduct.

(c) Notwithstanding subdivision (b), the chairperson of the commission may grant the committee an extension of time, not exceeding six months, when the committee demonstrates that additional time is necessary to complete its investigation or determination, as described in subdivision (b).

(d) The recommended decision of the committee shall be in writing and a copy of the decision shall be delivered to the certified employee personally or sent to him or her by registered mail within 14 days after the meeting or hearing together with specific information relative to any administrative hearing to which the employee is entitled.

SEC. 5. Section 44270.1 of the Education Code is amended to read:

44270.1. (a) The minimum requirements for the professional services credential with a specialization in administrative services are all of the following:

(1) Possession of a valid preliminary administrative services credential, as specified in Section 44270.

(2) A minimum of two years of successful experience in a full-time administrative position in a public school or private school of equivalent status, while holding the preliminary administrative services credential, as attested by the employing school district or agency, including, but not limited to, the State Department of Education, in the case of state school administrators, and county offices of education, in the case of county school administrators.

(3) Completion of a commission-approved program of advanced preparation. Each candidate, in consultation with employing school district personnel and university personnel, shall develop an

individualized program of professional development activities for this advanced preparation program based upon individual needs. Each individualized program will include university coursework and may include, nonuniversity activities or advanced administrative field experiences. The commission shall adopt standards and criteria for the university programs of advanced preparation and nonuniversity activities.

(b) The commission may, at the request of a credential candidate, grant a waiver, pursuant to subdivision (m) of Section 44225, of the requirement of university coursework upon its finding that the candidate, in consultation with personnel of the employing school district and personnel of the university, is not able to develop an individualized program of professional development for the advanced preparation program that meets the individual needs of the candidates.

(c) The professional administrative services credential shall be valid for a period of five years from date of issuance and may be renewed upon completion of professional renewal requirements specified by the commission.

SEC. 6. Section 44421 of the Education Code is amended to read:

44421. The Commission for Teacher Preparation and Licensing shall privately admonish, publicly reprove, revoke or suspend for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system, or for any cause which would have warranted the denial of an application for a credential or the renewal thereof, or for evident unfitness for service.

SEC. 7. Section 44421.1 is added to the Education Code, to read:

44421.1. Notwithstanding Section 44421, the Commission on Teacher Credentialing shall privately admonish, or suspend or revoke the credential of, any certificated person who knowingly and willfully uses school records of pupil data in connection with, or implicitly or explicitly attempts to recruit a pupil to be a customer for, any business owned by the certificated person or in which the certificated person is an employee.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 682

An act relating to the Los Angeles Unified School District, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 20, 1994.]

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

SECTION 1. (a) This act shall be known and may be cited as the Katz School Safety Act of 1994.

(b) The Legislature finds and declares all of the following:

(1) According to the Bureau of Justice Statistics, approximately 100,000 of the nation's 45,000,000 pupils take weapons to school each day.

(2) The incidence of weapons being carried onto junior and senior high school campuses has increased dramatically over recent years.

(3) Los Angeles Unified School District, the nation's second largest school district, reported 709 incidents of pupils bringing weapons onto campus in 1992. Of those reports, 182 involved assaults with deadly weapons against pupils.

(4) Two pupils within the Los Angeles Unified School District were fatally shot within a 33-day period in 1993.

(c) In enacting this legislation, the Legislature intends to support increased efforts of the Los Angeles Unified School District to detect weapons that would otherwise be carried onto public school campuses, threatening the safety of our children and our educators.

SEC. 2. The funds allocated to the Los Angeles Unified School District pursuant to Item 6110-171-001 of the Budget Act of 1994 shall be expended no later than 12 months after the funds are received by that district. Those funds shall only be used for the one-time purchase of security devices and equipment, including hand-held and stationary metal detectors, and shall not be used to supplant currently proposed expenditures or salaries.

SEC. 3. The Los Angeles Unified School District shall report to the Legislative Analyst no later than September 1, 1995, on the expenditure of funds allocated pursuant to Item 6110-171-001 of the Budget Act of 1994.

SEC. 4. The Legislature finds and declares that due to unique circumstances existing in the Los Angeles Unified School District affecting the health and safety of pupils attending public schools in that district, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

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

In order to protect the health and safety of pupils in the Los Angeles Unified School District, it is necessary that this act take effect immediately.

CHAPTER 683

An act to add Sections 103.6 and 103.61 to the Health and Safety Code, relating to AIDS.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 103.6 is added to the Health and Safety Code, to read:

103.6. The Legislature finds and declares all of the following:

(a) The AIDS pandemic continues to devastate California. Over 44,000 Californians have died of AIDS since 1981, and it is estimated that one out of every 200 Californians is infected with HIV, the virus believed to cause AIDS. Education remains the best tool to prevent the ongoing spread of HIV.

(b) The seroprevalence rate of HIV-infected persons is increasing dramatically in some groups. The incidence rate among women, people of color, at-risk youth, substance abusers, rural residents and their sexual partners is increasing, as is the rate of infection among gay and bisexual men, especially in urban areas. It is clear that targeted financial resources must be directed to conduct effective HIV education and risk reduction.

(c) Many AIDS service providers, community-based organizations, and other advocacy groups lack the technical assistance necessary for them to access public and private grant moneys to serve their clients.

(d) In addition to prevention education efforts, there are additional unmet financial needs in the war against HIV infection and AIDS. These unmet needs include, but are not limited to, care and treatment of those with HIV, expanded medical and social behavioral research, funding for HIV antibody testing at both anonymous and confidential test sites throughout California, housing and financial assistance for those with HIV and their families, and mental health programs for people with HIV and those at risk for contracting AIDS.

(e) Numerous state agencies and departments conduct HIV-related programs, including the State Department of Health Services, the State Department of Social Services, the Department of Corrections, the State Department of Alcohol and Drug Programs, the State Department of Education, the State Department of Mental Health, the Department of the Youth Authority, and the University

of California. Coordination of the various state funded programs will enhance the service delivery of HIV-related programs to Californians in need.

(f) An evaluation of state prevention and education efforts was conducted by the Institute for Health Policy Studies at the University of California, San Francisco and published in March of 1993. This report, entitled "HIV Prevention in California," noted both positive achievements of state-run programs as well as opportunities for improvement. Among the primary recommendations of the study was the need to legislatively identify the Office of AIDS in the State Department of Health Services as the lead agency on HIV and AIDS to ensure the goal of state program coordination.

SEC. 2. Section 103.61 is added to the Health and Safety Code, immediately following Section 103.6, to read:

103.61. There is in the State Department of Health Services an Office of AIDS. The State Department of Health Services, Office of AIDS, shall be the lead agency within the state, responsible for coordinating state programs, services, and activities relating to the human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), and AIDS related conditions (ARC). Among its responsibilities, the State Department of Health Services, Office of AIDS, shall coordinate Chapter 1.4 (commencing with Section 140), Chapter 1.85 (commencing with Section 188), Chapter 1.10 (commencing with Section 195), Chapter 1.12 (commencing with Section 199.30), Chapter 1.13 (commencing with Section 199.42), Chapter 1.14 (commencing with Section 199.45), Chapter 1.15 (commencing with Section 199.55), Chapter 1.16 (commencing with Section 199.70), Chapter 1.17 (commencing with Section 199.81), Chapter 1.19 (commencing with Section 199.86), and Chapter 1.20 (commencing with Section 199.95). Any reference in those provisions to the State Department of Health Services shall be deemed a reference to the Office of AIDS.

CHAPTER 684

An act to amend Section 17538.5 of the Business and Professions Code, relating to consumer protection.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The California workplace is rapidly changing.

(b) It is estimated that over 7.5 million Californians operate home-based businesses.

(c) A large number of home-based businesses and other individuals use commercial mail receiving agencies for convenience and numerous support services provided by these businesses.

(d) The commercial mail receiving agency industry is the most appropriate party to establish self-regulation and identification policies to provide consumer confidence.

(e) There is a need for the commercial mail receiving agency industry to have a statewide registry system available to governmental agencies for inspection.

(f) A registry system for commercial mail receiving agencies will provide a mechanism to identify commercial mail receiving agency locations to assist governmental agencies in resolving consumer disputes and complaints.

SEC. 2. Section 17538.5 of the Business and Professions Code is amended to read:

17538.5. (a) It is unlawful in the sale or offering for sale of consumer goods or services for any person conducting, any business in this state which utilizes a post office box address, a private mailbox receiving service, or a street address representing a site used for the receipt or delivery of mail or as a telephone answering service, to fail to disclose the legal name under which business is done and, except as provided in paragraph (2) of subdivision (b), the complete street address from which business is actually conducted in all advertising and promotional materials, including order blanks and forms. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both.

(b) (1) This section shall not apply to a person who sells the preponderance of goods and services at retail from trade premises which are open to the public regularly during normal business hours where the post office box or telephone answering service is supportive of and ancillary to the sales made or to any person who provides services pursuant to a license issued pursuant to this code or any other provision of law by a state board or agency or, except for a person conducting a mail order or catalog business, by a city or county or city and county in this state, which has the person's current business street address or home address on record and which is authorized to reveal that address to inquiring persons.

(2) If a person conducts a business described in subdivision (a) from that person's residence, the person is not required to disclose the residence address if both of the following conditions are satisfied:

(A) The person's current business street address or home address is contained in a United States Postal Service (USPS) Form 1583 that is filed with the USPS.

(B) The person has signed an acknowledgement form substantially in accordance with the provisions set forth in subdivision (f) which, among other things, authorizes the commercial mail receiving agency to act as that person's agent for

service of process.

(c) A commercial mail receiving agency (CMRA) shall not provide private mailbox receiving service to any customer until it obtains from that customer at least two pieces of identification regarding that customer and provides to that customer an acknowledgment, as set forth in subdivision (f), which (1) acknowledges the obligation to advise the CMRA of any change in address, (2) authorizes the CMRA to act as an agent for service of process, and (3) acknowledges the requirements of Sections 17200 and 17500, which prohibit unfair competition and false advertising. The commercial mail receiving agency shall thereafter maintain a copy of any United States Postal Service Form 1583 for each mailbox service customer, along with a copy of each of the two pieces of identification used by the customer, for a period of two years after the termination of service to that customer. Upon the request of the Department of Consumer Affairs or any law enforcement agency conducting an investigation, the commercial mail receiving agency shall make available to the Department of Consumer Affairs or that law enforcement agency, for purposes of that investigation and copying, its copy of the United States Postal Service Form 1583 and the two pieces of identification used by the customer.

(d) (1) Every person receiving private mailbox receiving service from a CMRA in this state shall be required to sign an agreement, along with a USPS Form 1583, which authorizes the CMRA owner or operator to act as agent for service of process for the mail receiving service customer. Every CMRA owner or operator shall be required to accept service of process for and on behalf of any of their mail receiving service customers, and for two years after termination of any mail receiving service customer agreement. Upon receipt of any process for any mailbox service customer, the CMRA owner or operator shall (A) within 48 hours after receipt of any process, place a copy of the documents or a notice that the documents were received into the customer's mailbox or other place where the customer usually receives his or her mail, unless the mail receiving service for the customer was previously terminated, and (B) within five days after receipt, send all documents by first-class mail, to the last known home or personal address of the mail receiving service customer. The CMRA shall obtain a certificate of mailing in connection with the mailing of the documents. Service of process upon the mail receiving service customer shall then be deemed perfected 10 days after the date of mailing.

If the CMRA owner or operator has complied with the foregoing requirements and provides to any party participating in a lawsuit involving a mail receiving service customer a declaration of service by mail, given under penalty of perjury along with a certificate of mailing, the CMRA owner or operator shall have no further liability in connection with acting as agent for service of process for its mail receiving service customer.

(2) Upon complaint or inquiry concerning any CMRA mail

receiving service customer, the CMRA owner or operator shall inform the person making the complaint or inquiry that the CMRA is an authorized agent for service of process on the mail receiving service customer.

(3) Upon presentation of a certified copy of a judgment, the CMRA shall disclose to the judgment creditor the last known address of any of its mail receiving service customers against whom the judgment was obtained.

(e) An owner or operator of a CMRA who, acting in good faith, contacts a governmental agency concerning suspected illegal or fraudulent activities carried out by a mail receiving service customer shall have no liability for claims filed by the customer arising out of that contact. No owner or operator of a commercial mail receiving agency that maintains on file a copy of the United States Postal Service Form 1583 for its private mailbox receiving service customers and complies with subdivision (c) shall be liable for any illegal acts of any mail receiving service customer based only on the fact that the owner or operator of the CMRA provided mail receiving services to the customer.

(f) The following acknowledgement and notice, substantially in the form set forth below, shall be delivered to each person obtaining private mailbox receiving service at a CMRA:

"ACKNOWLEDGEMENT BY PRIVATE MAILBOX SERVICE CUSTOMERS

This acknowledgement is required by Section 17538.5 of the Business and Professions Code.

Any person obtaining private mailbox receiving service in the State of California must read and acknowledge receipt of the following statement, which is to be kept on file at this CMRA and will be made available, upon demand, to the Department of Consumer Affairs or any law enforcement agency conducting an investigation.

By requesting and obtaining use of a private mailbox receiving service in the State of California, I acknowledge that:

1. I am obligated to disclose my actual home address or place of residence on a USPS Form 1583 or other form as may later be developed and I further agree that I will provide prompt written notice to this CMRA of any subsequent change in my home address or place of residence.

2. By signing below, I irrevocably authorize this CMRA to act as my agent for service of process to receive any legal documents that may be served upon me. This authorization shall continue from the date of this agreement until two years after my mail receiving service has been terminated. I understand that this CMRA will (A) place a copy of the documents or a notice that the documents were received into my mailbox or other place where I usually receive my mail, unless my mail receiving service has been terminated, and (B) send

all documents by first-class mail to the home or other address last known to the CMRA.

3. I further acknowledge that I understand that use of a private mailbox receiving service for commercial purposes in the State of California requires the user to comply with all applicable laws, including Section 17538.5 of the Business and Professions Code and laws prohibiting unfair competition and false advertising as set forth in Sections 17200 and 17500 of the Business and Professions Code. Violation of these laws may result in criminal or civil penalties or both. I understand that the United States Postal Service Form 1583 that must be prepared for each private mailbox receiving service customer shall be delivered to the local United States Post Office and a copy of the form must be retained by this CMRA and made available upon demand to the Department of Consumer Affairs or any law enforcement agency conducting an investigation. I hereby agree to accept and abide by the foregoing requirements.

_____ _____

Date Signature

_____

Name Printed

_____

Street Address

_____

City State Zip"

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 685

An act to amend Sections 3003, 3006, 3281, 3282, 3283, 3284, 3285, 3285.1, 3285.2, 3285.3, 3285.4, and 3351 of the Health and Safety Code, relating to communicable disease.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 3003 of the Health and Safety Code is amended to read:

3003. As used in this division, a person has "active tuberculosis disease" when either one of the following occur:

(a) A smear or culture taken from any source in the person's body has tested positive for tuberculosis and the person has not completed the appropriate prescribed course of medication for active tuberculosis disease.

(b) There is radiographic, current clinical, or laboratory evidence sufficient to support a medical diagnosis of tuberculosis for which treatment is indicated.

SEC. 2. Section 3006 of the Health and Safety Code is amended to read:

3006. As used in this division the following terms have the following meanings, unless the context indicates otherwise:

(a) "Infectious tuberculosis disease" means active or suspected active tuberculosis disease in an infectious state.

(b) "Tuberculosis infection" means the latent phase of tuberculosis, during which the infected person cannot spread tuberculosis to others.

(c) "Heightened risk of tuberculosis exposure" means likely exposure to persons with infectious tuberculosis disease.

(d) "The appropriate prescribed course of medication for tuberculosis disease" means that course recommended by the health officer, the most recent guidelines of the department, the most recent guidelines of the Centers for Disease Control and Prevention, or the most recent guidelines of the American Thoracic Society.

(e) "Directly observed therapy" means the appropriately prescribed course of treatment for tuberculosis disease in which the prescribed antituberculosis medications are administered to the person or taken by the person under direct observation of a health care provider or a designee of the health care provider approved by the local health officer.

(f) An "examination" for tuberculosis infection or disease means conducting tests, including, but not limited to, Mantoux tuberculin skin tests, laboratory examination, and X-rays, as recommended by any of the following:

(1) The local health officer.

(2) The most recent guidelines of the state department.

(3) The most recent guidelines of the Centers for Disease Control and Prevention.

(4) The most recent guidelines of the American Thoracic Society.

(g) "State correctional institution" means a prison, institution, or other facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority.

(h) "Local detention facility" is defined in Section 6031.4 of the Penal Code.

(i) "Penal institution" means either a state correctional institution or a local detention facility.

(j) "Health facility" means a licensed health facility as defined in Sections 1250, 1250.2, and 1250.3.

(k) "Health officer" or "local health officer" includes his or her designee.

SEC. 3. Section 3281 of the Health and Safety Code is amended to read:

3281. (a) (1) A health facility, local detention facility, or state correctional institution shall not discharge or release any of the following persons unless subdivision (e) is complied with:

(A) A person known to have active tuberculosis disease.

(B) A person who the medical staff of the health facility or of the penal institution has reasonable grounds to believe has active tuberculosis disease.

(2) In addition, persons specified in this subdivision may be discharged from a health facility only after a written treatment plan described in Section 3282 is approved by a local health officer of the jurisdiction in which the health facility is located. Treatment plans submitted for approval pursuant to this paragraph shall be reviewed by the local health officer within 24 hours of receipt of the plans.

(3) The approval requirement of paragraph (2) shall not apply to any transfer to a general acute care hospital when the transfer is due to an immediate need for a higher level of care, nor to any transfer from any health facility to a correctional institution. Transfers or discharges described in this paragraph shall occur only after the notification and treatment plan required by Section 3282 have been received by the local health officer.

(4) This subdivision shall not apply to transfers within the state correctional system or to interfacility transfers occurring within a local detention facility system.

(b) No health facility shall transfer a person described in subparagraph (A) or (B) of paragraph (1) of subdivision (a) to another health facility unless subdivision (e) is complied with. This subdivision shall not apply to transfers within the state correctional system or to interfacility transfers occurring within a local detention facility system.

(c) No state correctional institution or local detention facility shall transfer a person described in subparagraph (A) or (B) of paragraph (1) of subdivision (a) from a state to a local, or from a local to a state,

penal institution unless notification and a written treatment plan are received by the chief medical officer of the penal institution receiving the person.

(d) No local detention facility shall transfer a person described in subparagraph (A) or (B) of paragraph (1) of subdivision (a) to a local detention facility in another jurisdiction unless subdivision (e) is complied with and notification and a written treatment plan are received by the chief medical officer of the local detention facility receiving the person.

(e) All discharges, releases, or transfers described in subdivisions (a), (b), (c), and (d) may occur only after notification and a written treatment plan pursuant to Section 3282 has been received by the local health officer. When prior notification would jeopardize the person's health, the public safety, or the safety and security of the penal institution, then the notification and treatment plan shall be submitted within 24 hours of discharge, release, or transfer.

SEC. 4. Section 3282 of the Health and Safety Code is amended to read:

3282. Each health care provider who treats a person for active tuberculosis disease, each person in charge of a health facility, or each person in charge of a clinic providing outpatient treatment for active tuberculosis disease shall promptly report to the local health officer at the times that the health officer requires, but no less frequently than when there are reasonable grounds to believe that a person has active tuberculosis disease, and when a person ceases treatment for tuberculosis disease. Situations in which the provider may conclude that the patient has ceased treatment include times when the patient fails to keep an appointment, relocates without transferring care, or discontinues care. The initial disease notification report shall include an individual treatment plan that includes the patient name, address, date of birth, tuberculin skin test results, pertinent radiologic, microbiologic, and pathologic reports whether final or pending, and any other information required by the local health officer. Subsequent reports shall provide updated clinical status and laboratory results, assessment of treatment adherence, name of current care provider if patient transfers care, and any other information required by the local health officer. A facility discharge, release, or transfer report shall include all pertinent and updated information required by the local health officer not previously reported on initial or subsequent reports, and shall specifically include verified patient address, the name of the medical provider who has specifically agreed to provide medical care, clinical information used to assess the current infectious state, and any other information required by the local health officer. Each health care provider who treats a person with active tuberculosis disease, and each person in charge of a health facility or a clinic providing outpatient treatment for active tuberculosis disease, shall maintain written documentation of each patient's adherence to his or her individual treatment plans. Nothing in this section shall authorize the

disclosure of test results for human immunodeficiency virus (HIV) unless authorized by Chapter 1.11 (commencing with Section 199.20) of, Chapter 1.12 (commencing with Section 199.30) of, and Chapter 1.13 (commencing with Section 199.42) of, Division 1.

In the case of a parolee under the jurisdiction of the Department of Corrections, the local health officer shall notify the medical officer of the parole region or the physician and surgeon designated by the Director of Corrections when there are reasonable grounds to believe that the parolee has active tuberculosis disease and when the parolee ceases treatment for tuberculosis. Situations where the local health officer may conclude that the parolee has ceased treatment include times when the parolee fails to keep an appointment, relocates without transferring care, or discontinues care.

SEC. 5. Section 3283 of the Health and Safety Code is amended to read:

3283. Each health care provider who treats a person for active tuberculosis disease shall examine, or cause to be examined, all household contacts or shall refer them to the local health officer for examination. Each health care provider shall promptly notify the local health officer of the referral. When required by the local health officer, nonhousehold contacts and household contacts not examined by a health care provider shall submit to examination by the local health officer or designee. If any abnormality consistent with tuberculosis disease is found, steps satisfactory to the local health officer shall be taken to refer the person promptly to a health care provider for further investigation, and if necessary, treatment. Contacts shall be reexamined at times and in a manner as the local health officer may require. When requested by the local health officer, a health care provider shall report the results of any examination related to tuberculosis of a contact.

SEC. 6. Section 3284 of the Health and Safety Code is amended to read:

3284. (a) Within the territory under his or her jurisdiction, each local health officer may order examinations for tuberculosis infection for the purposes of directing preventive measures for persons in the territory, except those incarcerated in a state correctional institution, for whom the local health officer has reasonable grounds to determine are at heightened risk of tuberculosis exposure.

(b) An order for examination pursuant to this section shall be in writing and shall include other terms and conditions as may be necessary to protect the public health.

SEC. 7. Section 3285 of the Health and Safety Code is amended to read:

3285. Each local health officer is hereby directed to use every available means to ascertain the existence of, and immediately investigate all reported or suspected cases of active tuberculosis disease in the jurisdiction, and to ascertain the sources of those infections. In carrying out the investigations, each local health officer shall follow applicable local rules and regulations and all general and

special rules, regulations, and orders of the state department. If the local health officer determines that the public health in general or the health of a particular person is endangered by exposure to a person who is known to have active tuberculosis disease, or to a person for whom there are reasonable grounds to believe has active tuberculosis disease, the local health officer may issue any orders he or she deems necessary to protect the public health or the health of any other person, and may make application to a court for enforcement of the orders. Upon the receipt of information that any order has been violated, the health officer shall advise the district attorney of the county in which the violation has occurred, in writing, and shall submit to the district attorney the information in his or her possession relating to the subject matter of the order, and of the violation or violations thereof.

The orders may include, but shall not be limited to, any of the following:

(a) An order authorizing the removal to, detention in, or admission into, a health facility or other treatment facility for appropriate examination for active tuberculosis disease of a person who is known to have active tuberculosis disease, or a person for whom there are reasonable grounds to believe that the person has active tuberculosis disease and who is unable or unwilling voluntarily to submit to the examination by a physician or by the local health officer. Any person whom the health officer determines should have an examination for tuberculosis disease may have the examination made by a physician and surgeon of his or her own choice who is licensed to practice medicine under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code under terms and conditions as the local health officer shall determine on reasonable grounds to be necessary to protect the public health. This section does not authorize the local health officer to mandate involuntary anergy testing.

(b) An order requiring a person who has active tuberculosis disease to complete an appropriate prescribed course of medication for tuberculosis disease and, if necessary, to follow required infection control precautions for tuberculosis disease. This subdivision does not allow the forceable or involuntary administration of medication.

(c) An order requiring a person who has active tuberculosis disease and who is unable or unwilling otherwise to complete an appropriate prescribed course of medication for tuberculosis disease to follow a course of directly observed therapy. This subdivision does not allow forceable or involuntary administration of medication.

(d) An order for the removal to, detention in, or admission into, a health facility or other treatment facility of a person if both of the following occur:

(1) The person has infectious tuberculosis disease, or who presents a substantial likelihood of having infectious tuberculosis disease, based upon proven epidemiologic evidence, clinical evidence, X-ray readings, or tuberculosis laboratory test results.

(2) The local health officer finds, based on recognized infection control principles, that there is a substantial likelihood the person may transmit tuberculosis to others because of his or her inadequate separation from others.

(e) An order for the removal to, detention in, or admission into, a health facility or other treatment facility of a person if both of the following occur:

(1) The person has active tuberculosis disease, or has been reported to the health officer as having active tuberculosis disease with no subsequent report to the health officer of the completion of an appropriate prescribed course of medication for tuberculosis disease.

(2) There is a substantial likelihood, based on the person's past or present behavior, that he or she cannot be relied upon to participate in or complete an appropriate prescribed course of medication for tuberculosis disease and, if necessary, follow required infection control precautions for tuberculosis disease. The behavior may include, but is not limited to, refusal or failure to take medication for tuberculosis disease, refusal or failure to keep appointments or treatment for tuberculosis disease, refusal or failure to complete the treatment for tuberculosis disease, or disregard for infection control precautions for active tuberculosis disease.

(f) An order for exclusion from attendance at the workplace for persons with infectious tuberculosis disease. The order may, also, exclude the person from any place when the local health officer determines that the place cannot be maintained in a manner adequate to protect others against the spread of tuberculosis disease.

(g) An order for isolation of persons with infectious tuberculosis disease to their place of residence until the local health officer has determined that they no longer have infectious tuberculosis disease.

(h) This section shall apply to all persons except those incarcerated in a state correctional institution.

(i) This section shall not be construed to require a private hospital or other private treatment facility to accept any patient without a payment source, including county responsibilities under Section 17000 of the Welfare and Institutions Code, except as required by Sections 1317 et seq. or by federal law.

SEC. 8. Section 3285.1 of the Health and Safety Code is amended to read:

3285.1. The local health officer may detain in a hospital or other appropriate place for examination or treatment, a person who is the subject of an order of detention issued pursuant to subdivision (a), (d), or (e) of Section 3285 without a prior court order except that when a person detained pursuant to subdivision (a), (d), or (e) of Section 3285 has requested release, the local health officer shall make an application for a court order authorizing the continued detention within 72 hours after the request or, if the 72-hour period ends on a Saturday, Sunday, or legal holiday, by the end of the first business day following the Saturday, Sunday, or legal holiday, which application

shall include a request for an expedited hearing. After the request for release, detention shall not continue for more than five business days in the absence of a court order authorizing detention. However, in no event shall any person be detained for more than 60 days without a court order authorizing the detention. The local health officer shall seek further court review of the detention within 90 days following the initial court order authorizing detention and thereafter within 90 days of each subsequent court review. In any court proceeding to enforce a local health officer's order for the removal or detention of a person, the local health officer shall prove the particularized circumstances constituting the necessity for the detention by clear and convincing evidence. Any person who is subject to a detention order shall have the right to be represented by counsel and upon the request of the person, counsel shall be provided.

SEC. 9. Section 3285.2 of the Health and Safety Code is amended to read:

3285.2. (a) An order of a local health officer pursuant to Section 3285 shall set forth all of the following:

(1) The legal authority under which the order is issued, including the particular sections of state law or regulations.

(2) An individualized assessment of the person's circumstances or behavior constituting the basis for the issuance of the order.

(3) The less restrictive treatment alternatives that were attempted and were unsuccessful, or the less restrictive treatment alternatives that were considered and rejected, and the reasons the alternatives were rejected.

(4) The orders shall be in writing, and shall include the name of the person, the period of time during which the order shall remain effective, the location, payer source if known, and other terms and conditions as may be necessary to protect the public health. Upon issuing an order, a copy of the order shall be served upon the person named in the order.

(b) An order for the detention of a person shall do all of the following:

(1) Include the purpose of the detention.

(2) Advise the person being detained that he or she has the right to request release from detention by contacting a person designated on the local health officer's order at the telephone number stated on the order and that the detention shall not continue for more than five business days after the request for release, in the absence of a court order authorizing the detention.

(3) Advise the person being detained that, whether or not he or she requests release from detention, the local health officer is required to obtain a court order authorizing detention within 60 days following the commencement of detention and thereafter shall further seek court review of the detention within 90 days of the court order and within 90 days of each subsequent court review.

(4) Advise the person being detained that he or she has the right to arrange to be represented by counsel or to have counsel provided,

and that if he or she chooses to have counsel provided, the counsel will be notified that the person has requested legal representation.

(5) Be accompanied by a separate notice that shall include, but not be limited to, all of the following additional information:

(A) That the person being detained has the right to request release from detention by contacting a person designated on the local health officer's order at a telephone number stated on the order, and that the detention shall not continue for more than five business days after the request in the absence of a court order authorizing the detention.

(B) That he or she has the right to arrange to be advised and represented by counsel or to have counsel provided, and that if he or she chooses to have counsel provided, the counsel will be notified that the person has requested legal representation.

(C) That he or she may supply the addresses or telephone numbers of not more than two individuals to receive notification of the person's detention, and that the local health officer shall, at the patient's request, provide notice within the limits of reasonable diligence to those people that the person is being detained.

SEC. 10. Section 3285.3 of the Health and Safety Code is amended to read:

3285.3. Notwithstanding any inconsistent provision of Section 3285, 3285.1 or 3285.2, all of the following shall apply:

(a) A person who is detained solely pursuant to subdivision (a) of Section 3285 shall not continue to be detained beyond the minimum period of time required, with the exercise of all due diligence, to make a medical determination of whether a person who is suspected of having tuberculosis disease, has active tuberculosis or whether a person who has active tuberculosis disease has infectious tuberculosis disease. Further detention of the person shall be authorized only upon the issuance of a local health officer's order pursuant to subdivision (d) or (e) of Section 3285.

(b) A person who is detained solely for the reasons described in subdivision (d) of Section 3285 shall not continue to be detained after he or she ceases to be infectious or after the local health officer ascertains that changed circumstances exist that permit him or her to be adequately separated from others so as to prevent transmission of tuberculosis disease after his or her release from detention.

(c) A person who is detained for the reasons described in subdivision (e) of Section 3285 shall not continue to be detained after he or she has completed an appropriate prescribed course of medication.

SEC. 11. Section 3285.4 of the Health and Safety Code is amended to read:

3285.4. For the purposes of Sections 3285, 3285.1, and 3285.2, all of the following shall apply:

(a) If necessary, language interpreters and persons skilled in communicating with vision and hearing impaired individuals shall be provided in accordance with applicable law.

(b) Nothing in those sections shall be construed to permit or require the forcible administration of any medication without a prior court order.

(c) Any and all orders authorized under those sections shall be made by the local health officer. His or her authority to make the orders may be delegated to the person in charge of medical treatment of inmates in penal institutions within the local health officer's jurisdiction, or pursuant to Section 7. The local health officer shall not make any orders incorporating by reference any other rules or regulations.

SEC. 12. Section 3351 of the Health and Safety Code is amended to read:

3351. Inasmuch as the orders provided for by Section 3285 are for the protection of the public health, any person who, after service upon him or her of an order of a local health officer as provided in Section 3285 violates or fails to comply with the order, is guilty of a misdemeanor. Upon conviction thereof, in addition to any and all other penalties that may be imposed by law upon the conviction, the person may be ordered by the court confined until the order of the local health officer shall have been fully complied with or terminated by the local health officer, but not exceeding one year from the date of passing judgment upon the conviction, further, the court, upon suitable assurances that the order of the local health officer will be complied with, may place any person convicted of a violation of the order of the local health officer upon probation for a period not to exceed two years, upon condition that the order of the local health officer be fully complied with, further, upon any subsequent violation of the order of the local health officer, the probation shall be terminated and confinement as provided for in this section shall be ordered by the court. Confinement may be accomplished by placement in any appropriate facility, penal institution, or dwelling approved for the specific case by the local health officer.

SEC. 13. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 686

An act to add Section 18987.17 to the Welfare and Institutions Code, relating to children's services.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 18987.17 is added to the Welfare and Institutions Code, to read:

18987.17. (a) Pursuant to this chapter, the Secretary of Health and Welfare or the Secretary of the Youth and Adult Correctional Agency, as appropriate, may approve a request submitted by a county selected pursuant to Section 18987.05, to implement an alternative method for meeting specific state statutory requirements in the county's strategic plan. The secretary of the approving agency shall only approve a request when the coordinating council of the requesting county has certified, and the secretary has determined, that all of the following criteria have been met:

(1) The council has developed a specific alternative method for achieving the intent of the statute in question.

(2) The council's proposed alternative is consistent with this chapter and the intent of the statutory requirements governing the programs proposed for integration in the county's strategic plan.

(3) Approval of the request is essential to achieve one or more objectives of the strategic plan.

(4) The objective of the strategic plan cannot be achieved solely through waiver of regulation.

(b) A request subject to this section may not be approved for a period that exceeds the length of the pilot program authorized under this chapter, but may be approved for a shorter period as determined by the approving secretary.

(c) Prior to approving any request by a county under this section, the approving secretary shall provide written notification to the chairperson of the appropriate policy committee in each house of the Legislature. Final approval shall not occur until 30 days after this written notification is provided.

CHAPTER 687

An act to add Sections 14999.36 and 65302.9 to the Government Code, relating to commercial filming.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 14999.36 is added to the Government Code, to read:

14999.36. A city or county may adopt an ordinance or other regulation governing the issuance of permits to engage in the use of property for occasional commercial filming, on location, pursuant to Section 65302.9.

SEC. 2. Section 65302.9 is added to the Government Code, to read:

65302.9. (a) A city or county may adopt an ordinance or other regulation governing the issuance of permits to engage in the use of property for occasional commercial filming on location. This section shall not limit the discretion of a city or county to limit, condition, or deny the use of property for occasional commercial filming on location to protect the public health, safety, or welfare.

(b) All ordinances and regulations enacted by a city or county regulating by permit the use of property for occasional commercial filming on location shall not be subject to zoning ordinances or other land use regulations of that jurisdiction unless the filming ordinance or regulation expressly states that it is subject to, or governed by, those zoning ordinances or other land use regulations.

(c) The use of property for occasional commercial filming on location engaged in pursuant to a filming permit issued by a city or county shall be permitted in any zone unless the zoning ordinance or other land use regulations of the jurisdiction expressly prohibit filming in that zone.

CHAPTER 688

An act to amend Section 3027 of the Family Code, and to amend Section 68553 of the Government Code, relating to family law.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 3027 of the Family Code is amended to read:

3027. (a) If a court determines that an accusation of child abuse

or neglect made during a child custody proceeding is false and the person making the accusation knew it to be false at the time the accusation was made, the court may impose reasonable money sanctions, not to exceed all costs incurred by the party accused as a direct result of defending the accusation, and reasonable attorney's fees incurred in recovering the sanctions, against the person making the accusation. For the purposes of this section, "person" includes a witness, a party, or a party's attorney.

(b) On motion by any person requesting sanctions under this section, the court shall issue its order to show cause why the requested sanctions should not be imposed. The order to show cause shall be served on the person against whom the sanctions are sought and a hearing thereon shall be scheduled by the court to be conducted at least 15 days after the order is served.

(c) The remedy provided by this section is in addition to any other remedy provided by law.

SEC. 2. Section 68553 of the Government Code is amended to read:

68553. The Judicial Council shall establish judicial training programs for judges, referees, commissioners, mediators, and others as deemed appropriate who perform duties in family law matters.

The training shall include a family law session in any orientation session conducted for newly appointed or elected judges and an annual training session in family law.

The training shall include instruction in all aspects of family law, including effects of gender on family law proceedings, the economic effects of dissolution on the involved parties, and, on and after July 1, 1994, the effects of allegations of child abuse or neglect made during family law proceedings.

SEC. 3. The Judicial Council shall collect and analyze relevant information relating to allegations of child abuse or neglect made by persons during family law proceedings. The Judicial Council shall collect and analyze this information on or before January 1, 1997, for the purpose of developing a judicial training program pursuant to Section 68553 of the Government Code for judges, referees, commissioners, mediators, and others as deemed appropriate who perform duties in family law matters. The Judicial Council shall update and revise this information from time to time as it deems necessary.

CHAPTER 689

An act to amend Section 26721 of the Government Code, relating to fees.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 26721 of the Government Code is amended to read:

26721. Except as provided in this article, the fee for serving or executing any process or notice required by law or the litigants to be served is twenty-four dollars ($24), and there shall be no additional fee for substitute service when substitute service is authorized.

However, no fee shall be charged for serving an emergency protective order, protective order, or restraining order issued pursuant to Division 10 of the Family Code (the Domestic Violence Prevention Act) on a respondent who is in custody.

In any case where property has been levied upon and, pursuant to the levy, a copy of the writ of execution and a notice of levy are required by statute to be served either personally or by mail upon the judgment debtor or other person, no fee shall be charged for that service.

CHAPTER 690

An act to amend Sections 1596.71 and 1596.750 of, to add Section 1596.771 to, and to add Chapter 3.65 (commencing with Section 1597.70) to Division 2 of, the Health and Safety Code, relating to child day care facilities.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 1596.71 of the Health and Safety Code is amended to read:

1596.71. This chapter applies to Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with Section 1597.30). This chapter also applies to Chapter 3.65 (commencing with Section 1597.70).

SEC. 2. Section 1596.750 of the Health and Safety Code is amended to read:

1596.750. "Child day care facility" means a facility that provides nonmedical care to children under 18 years of age in need of personal

services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facility includes day care centers, employer-sponsored child care centers, and family day care homes.

SEC. 3. Section 1596.771 is added to the Health and Safety Code, immediately following Section 1596.770, to read:

1596.771. "Employer-sponsored child care center" means any child day care facility at the employer's site of business operated directly or through a provider contract by any person or entity having one or more employees, and available exclusively for the care of children of that employer, and of the officers, managers, and employees of that employer.

SEC. 4. Chapter 3.65 (commencing with Section 1597.70) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 3.65. EMPLOYER-SPONSORED CHILD CARE CENTERS

Article 1. General Provisions

1597.70. The Legislature finds and declares the following:

(a) It is significant that the Santa Clara County Intergovernmental Council has found that due to changes in the labor force and an increase in the child population, 25 percent of the nation's workers must make child care arrangements.

(b) Californians will benefit from investment in child care. According to the House Select Committee on Children, Youth, and Families, one dollar invested in preschool education results in a savings of four dollars and seventy-five cents ($4.75) in social costs.

(c) Allowing and encouraging businesses to open onsite or nearsite employer-sponsored child care centers has had a number of positive effects for Californians, including reduced job absenteeism, closer parent-child relationships, and increased worker productivity.

(d) In a 1990 study, the Department of General Services found that working parents add five to six miles to their daily commute for transporting their children to child care and school, and that the effect of this commute is 1,352 extra miles driven each year and an additional 56 pounds of auto emissions per person per year.

Article 2. Licensing Waivers for Small Businesses

1571.71. To encourage and facilitate the establishment of employer-sponsored child day care centers, the department shall allow for reasonable waivers of those regulations presenting difficulties to small businesses for licensure, provided that the health and safety of all children is maintained and that the applicant has agreed to alternative methods of meeting the purpose and intent of any regulation waived.

CHAPTER 691

An act to add Section 415.21 to the Code of Civil Procedure, relating to civil procedure.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 415.21 is added to the Code of Civil Procedure, to read:

415.21. (a) Notwithstanding any other provision of law, any person shall be granted access to a gated community for a reasonable period of time for the purpose of performing lawful service of process, upon identifying to the guard the person or persons to be served, and upon displaying a current driver's license or other identification, and one of the following:

(1) A badge or other confirmation that the individual is acting in his or her capacity as a representative of a county sheriff or marshal.

(2) Evidence of current registration as a process server pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code.

(b) This section shall only apply to a gated community which is staffed at the time service of process is attempted by a guard or other security personnel assigned to control access to the community.

SEC. 2. In enacting Section 1 of this act, it is not the intent of the Legislature to abrogate or modify the holding of the court in Bein v. Brechtel-Jochim Group, Inc. (1992), 6 Cal. App. 4th 1387, relating to service upon a guard in a gated community.

CHAPTER 692

An act to amend Section 5058 of the Penal Code, relating to corrections.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 5058 of the Penal Code is amended to read:

5058. (a) The director may prescribe and amend rules and regulations for the administration of the prisons and for the administration of the parole of persons sentenced under Section 1170 except those persons who meet the criteria set forth in Section 2962. The rules and regulations shall be promulgated and filed pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division

3 of Title 2 of the Government Code, except as otherwise provided in this section. All rules and regulations shall, to the extent practical, be stated in language that is easily understood by the general public.

For any rule or regulation filed as regular rulemaking as defined in paragraph (5) of subdivision (a) of Section 1 of Title 1 of the California Code of Regulations, copies of the rule or regulation shall be posted in conspicuous places throughout each institution and shall be mailed to all persons or organizations who request them no less than 20 days prior to its effective date.

(b) The director shall maintain, publish and make available to the general public, a compendium of the rules and regulations promulgated by the director or director's designee pursuant to this section.

(c) The following are deemed not to be "regulations" as defined in subdivision (b) of Section 11342 of the Government Code:

(1) Rules issued by the director or by the director's designee applying solely to a particular prison or other correctional facility, provided that the following conditions are met:

(A) All rules that apply to prisons or other correctional facilities throughout the state are adopted by the director pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(B) All rules except those that are excluded from disclosure to the public pursuant to subdivision (f) of Section 6254 of the Government Code are made available to all inmates confined in the particular prison or other correctional facility to which the rules apply and to all members of the general public.

(2) Short-term criteria for the placement of inmates in a new prison or other correctional facility, or subunit thereof, during its first six months of operation, or in a prison or other correctional facility, or subunit thereof, planned for closing during its last six months of operation, provided that the criteria are made available to the public and that an estimate of fiscal impact is completed pursuant to Section 6055, and following, of the State Administrative Manual dated July 1986.

(3) Rules issued by the director or director's designee that are excluded from disclosure to the public pursuant to subdivision (f) of Section 6254 of the Government Code.

(d) The following regulations are exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code under the conditions specified:

(1) Regulations adopted by the director or the director's designee applying to any legislatively mandated or authorized pilot program or a departmentally authorized pilot program, provided that an estimate of fiscal impact is completed pursuant to Section 6055, and following, of the State Administrative Manual dated July 1986, and that the following conditions are met:

(A) A pilot program affecting male inmates only shall affect no more than 10 percent of the total state male inmate population; a

pilot program affecting female inmates only shall affect no more than 10 percent of the total state female inmate population; and a pilot program affecting male and female inmates shall affect no more than 10 percent of the total state inmate population.

(B) The director certifies in writing that the regulations apply to a pilot program that qualifies for exemption under this subdivision.

(C) The certification and regulations are filed with the Office of Administrative Law and the regulations are made available to the public by publication pursuant to subparagraph (F) of paragraph (2) of subdivision (b) of Section 6 of Title 1 of the California Code of Regulations.

The regulations shall become effective immediately upon filing with the Secretary of State and shall lapse by operation of law two years after the date of the director's certification unless formally adopted by the director pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Action or actions, or policies implementing them, taken by the department and based upon a determination of imminent danger by the director or the director's designee that there is a compelling need for immediate action, and that unless that action is taken, serious injury, illness, or death is likely to result. The action or actions, or policies implementing them, may be taken provided that the following conditions shall subsequently be met:

(A) A written determination of imminent danger shall be issued describing the compelling need and why the specific action or actions must be taken to address the compelling need.

(B) The written determination of imminent danger shall be mailed within 10 working days to every person who has filed a request for notice of regulatory actions with the department and to the Chief Clerk of the Assembly and the Secretary of the Senate for referral to the appropriate policy committees.

Any policy in effect pursuant to a determination of imminent danger shall lapse by operation of law 15 calendar days after the date of the written determination of imminent danger unless an emergency regulation is filed with the Office of Administrative Law pursuant to subdivision (e). This section shall in no way exempt the department from compliance with other provisions of law related to fiscal matters of the state.

(e) Emergency regulations shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except that:

(1) Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the initial effective period for emergency regulations shall be 160 days.

(2) No showing of emergency is necessary in order to adopt emergency regulations other than a written statement by the director or the director's designee, to be filed with the Office of Administrative Law, certifying that operational needs of the

department require adoption of the regulations on an emergency basis.

(3) This subdivision shall apply only to the adoption and one readoption of any emergency regulation.

It is the intent of the Legislature, in authorizing the deviations in this subdivision from the requirements and procedures of Chapter 3.5 (commencing with Section 113340) of Part 1 of Division 3 of Title 2 of the Government Code, to authorize the department to expedite the exercise of its power to implement regulations as its unique operational circumstances require.

CHAPTER 693

An act to add Section 17729.5 to the Education Code, relating to school facilities.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 17729.5 is added to the Education Code, to read:

17729.5. Notwithstanding any other provisions of this chapter, the funding by the board of contracts entered into by a school district pursuant to this chapter shall not, in itself, make the board liable for any tort, breach of contract, or any other action for damages caused by a school district arising from those contracts. These contracts include, but are not limited to, contracts between the school district and its construction contractors, construction managers, architects, or engineers. The school district shall be liable for all torts, breaches of contract, or any other actions for damages caused by the school district.

CHAPTER 694

An act to add Section 16604.5 to, and Part 4.4 (commencing with Section 16604.5) to Division 9 of, the Welfare and Institutions Code, relating to substance-exposed infants.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Part 4.4 (commencing with Section 16604.5) is added to Division 9 of the Welfare and Institutions Code, to read:

PART 4.4. FAMILY PRESERVATION SERVICES

16604.5. When preparing their needs assessments and plans to implement the federal Family Preservation and Support Act (Sections 430 to 435, inclusive, of the Social Security Act (Subpart 2 (commencing with Section 629) of Part B of Subchapter 4 of Chapter 7 of Title 42 of the United States Code), as contained in the Omnibus Reconciliation Act of 1993 (Public Law 103-66)), counties shall consider providing an in-home assessment of substance-exposed infants after release from a hospital, as part of the protocols of Section 10901 of the Health and Safety Code. These assessments may be funded through the Family Preservation and Support program to the extent they are identified in a county's needs assessment and are part of a county's program plan, and federal Family Preservation and Support Act funds are available for this purpose.

SEC. 2. Section 16604.5 is added to the Welfare and Institutions Code, to read:

16604.5. When preparing their needs assessments and plans to implement the federal Family Preservation and Support Act (Sections 430 to 435, inclusive, of the Social Security Act (Subpart 2 (commencing with Section 629) of Part B of Subchapter 4 of Chapter 7 of Title 42 of the United States Code), as contained in the Omnibus Reconciliation Act of 1993 (Public Law 103-66)), counties shall consider providing an in-home assessment of substance-exposed infants after release from a hospital, as part of the protocols of Section 10901 of the Health and Safety Code. These assessments may be funded through the Family Preservation and Support program to the extent they are identified in a county's needs assessment and are part of a county's program plan, and federal Family Preservation and Support Act funds are available for this purpose.

SEC. 3. Section 2 of this act shall only take effect if Assembly Bill 3364 of the 1993–94 Regular Session is enacted and takes effect, in which case Section 1 of this act shall not take effect.

CHAPTER 695

An act to add Section 3332.6 to the Food and Agricultural Code, and to amend Section 13332.11 of the Government Code, relating to agriculture.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 3332.6 is added to the Food and Agricultural Code, to read:

3332.6. The California Exposition and State Fair may enter into a joint powers agreement with a joint powers authority created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code for the purpose of planning, designing, and constructing real property improvements, including new construction, alteration, extension, betterment, and repair, and the purchase of fixed and movable equipment. The planning, designing, and constructing of these improvements shall be undertaken in accordance only with those restrictions applicable to the joint powers authority.

SEC. 2. Section 13332.11 of the Government Code is amended to read:

13332.11. (a) No funds appropriated for capital outlay may be expended by any state agency, including the University of California, the California State University, and the community colleges, until the Department of Finance and the State Public Works Board have approved preliminary plans for the project to be financed from the appropriation for capital outlay, except that community college approvals by the State Public Works Board shall apply only to the allocation of state capital outlay funds appropriated heretofore and hereafter by the Legislature, including land acquisition and equipment funds.

This subdivision shall not apply to any of the following:

(1) Amounts for acquisition of land or other real property.

(2) Amounts needed for equipment or minor projects.

(3) Amounts appropriated specifically for preliminary surveys, studies, and planning.

(b) Any appropriated amounts for working drawings or construction where the working drawings or construction have been started by any state agency prior to approval of the preliminary plans by the State Public Works Board, and all amounts not approved by the board under this section shall be reverted to the fund from which the appropriation was made. If the Director of Finance or his or her authorized representative requests review of working drawings, no major project for which an appropriation is made shall be put out to bid until the working drawings have been approved by the Department of Finance. No substantial change shall be made from the preliminary plans or working drawings as approved by the State Public Works Board and the Department of Finance without written approval by the Department of Finance. Any proposed construction bid alternates shall be approved by the Department of Finance.

(c) No more than two thousand dollars ($2,000) of funds appropriated may be spent for any single unit of equipment until prior approval for the purchase of the equipment has been given by the Department of Finance.

(d) The State Public Works Board shall defer all augmentations in excess of 20 percent of the amount appropriated for each capital outlay project until the Legislature makes additional funds available for the specific project.

(e) Augmentations in excess of 10 percent of the amount appropriated for each capital outlay project shall be reported to the Chairperson of the Joint Legislative Budget Committee, or his or her designee, 20 days prior to board approval, or not sooner than whatever lesser time the chairperson, or his or her designee, may in each instance determine. Any augmentation of construction projects shall be limited to the amounts appropriated for construction contract costs and architectural and engineering services costs.

(f) Prior to State Public Works Board action on any capital outlay appropriation, the Department of Finance shall certify, in writing, to the Chairperson of the Joint Legislative Budget Committee, the chairpersons of the respective fiscal committees, and the legislative members of the board that the requested action is in accordance with the legislatively approved scope and cost. If, pursuant to the other provisions of this section, the Department of Finance approves changes to the approved scope or cost, or both, the department shall report the changes and associated cost implications. The reports also shall include all proposed or potential augmentations in excess of 10 percent of the amount appropriated for construction contract costs related to capital outlay projects.

(g) The State Public Works Board shall defer action with respect to approval of any portion of an acquisition project, or approval of preliminary plans, when it is determined that the estimated cost of the total acquisition project, or construction project, approved by the Legislature is in excess of 20 percent of the amount appropriated, unless, in the case of acquisition projects, it is determined that a lesser portion of the property is sufficient to meet the objectives of the project approved by the Legislature, and the Chairperson of the Joint Legislative Budget Committee, or his or her designee, is provided a 20-day prior notification of the proposed reductions in the acquisition project, or whatever lesser period the chairperson, or his or her designee, may in each instance determine.

(h) Nothing in this section shall be construed to limit or control the Department of Transportation in the expenditure of all funds appropriated to the department for capital outlay purposes.

(i) Nothing in subdivision (a) or (b) shall be construed to limit or control the California Exposition and State Fair in the expenditure of all funds appropriated to it for capital outlay purposes.

CHAPTER 696

An act to amend Sections 32000, 32106, 32110, 32121, 32125, 32126, and 32132 of, to amend and renumber Section 32102 of, and to add Sections 32000.1 and 32127.3 to, the Health and Safety Code, relating to health.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 32000 of the Health and Safety Code is amended to read:

32000. This division shall be known and may be cited as "The Local Health Care District Law." Any reference in any statute to the Local Hospital District Law shall be deemed a reference to the Local Health Care District Law, and any reference in any statute to a hospital district shall be deemed to be a reference to a health care district.

SEC. 2. Section 32000.1 is added to the Health and Safety Code, to read:

32000.1. For purposes of this division, both of the following shall apply:

(a) Any reference to "hospital district" or "district" shall mean "health care district," and any reference to "hospital administrator" or "administrator" shall mean "chief executive officer."

(b) "Health care facility" shall mean a health facility as defined in Section 1250 and a clinic as defined in Section 1204. "Health care facility" shall not include any place or establishment owned, or leased and operated, by one or more licensed health care practitioners and used as an office for the practice of their profession within the scope of their license.

SEC. 3. Section 32102 of the Health and Safety Code is amended and renumbered, immediately following Section 32100, to read:

32100.001. The board of hospital directors shall meet on the first Monday subsequent to 30 days after the completion of organization of the district and shall organize by the election of one of their members as chairperson or president and one as secretary.

SEC. 4. Section 32106 of the Health and Safety Code is amended to read:

32106. (a) Except as provided in this section, Section 32155, or the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) all of the sessions of the board of directors, whether regular or special, shall be open to the public, and a majority of the members of the board shall constitute a quorum for the transaction of business.

(b) The board of directors may order that a meeting held solely for the purpose of discussion or deliberation, or both, of reports

involving district trade secrets be held in closed session. Except as provided in this subdivision, the closed session shall meet all applicable requirements of Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code, including Section 54957.7.

(c) "Health care facility trade secrets," as used in this section, means a "trade secret," as defined in subdivision (d) of Section 3426.1 of the Civil Code, and in addition meets all of the following:

(1) Is necessary to initiate a new district service or program or add a district health care facility.

(2) Would, if prematurely disclosed, create a substantial probability of depriving the district of a substantial economic benefit.

(d) The exception provided in subdivision (b) to the general open meeting requirements for a meeting of the board of directors, shall not apply to a meeting where there is action taken, as defined in Section 54952.6 of the Government Code.

(e) Nothing in this section shall be construed to permit the board of directors to order a closed meeting for the purposes of discussing or deliberating, or to permit the discussion or deliberation in any closed meeting of any proposals regarding:

(1) The sale, conversion, contract for management, or leasing of any district health care facility or the assets thereof, to any for-profit or nonprofit entity, agency, association, organization, governmental body, person, partnership, corporation, or other district.

(2) The conversion of any district health care facility to any other form of ownership by the district.

(3) The dissolution of any district.

SEC. 5. Section 32110 of the Health and Safety Code is amended to read:

32110. (a) Except as provided in subdivision (d), no person who is a director, policymaking management employee, or medical staff officer of a hospital owned or operated by a district shall do either of the following:

(1) Possess any ownership interest in any other hospital serving the same area as that served by the district hospital of which the person is a director, policymaking management employee, or medical staff officer.

(2) Be a director, policymaking management employee, or medical staff officer of any hospital serving the same area as the area served by the district hospital.

(b) For purposes of this section, a hospital shall be considered to serve the same area as a district hospital when more than 5 percent of the hospital's patient admissions are residents of the district.

(c) For purposes of this section, the possession of an ownership interest, including stocks, bonds, or other securities by the spouse or minor children or any person shall be deemed to be the possession or interest of the person.

(d) No person shall serve concurrently as a director or policymaking management employee of a district and as a director

or policymaking management employee of any other hospital serving the same area as the district, unless the boards of directors of the district and the hospital have determined that the situation will further joint planning, efficient delivery of health care services, and the best interest of the areas served by their respective hospitals, or unless the district and the hospital are affiliated under common ownership, lease, or any combination thereof.

(e) Any candidate who elects to run for the office of member of the board of directors of a district, and who owns stock in, or who works for any health care facility that does not serve the same area served by the district in which the office is sought, shall disclose on the ballot his or her occupation and place of employment.

SEC. 6. Section 32121 of the Health and Safety Code is amended to read:

32121. Each local district shall have and may exercise the following powers:

(a) To have and use a corporate seal and alter it at its pleasure.

(b) To sue and be sued in all courts and places and in all actions and proceedings whatever.

(c) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district, and to control, dispose of, convey, and encumber the same and create a leasehold interest in the same for the benefit of the district.

(d) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district.

(e) To establish one or more trusts for the benefit of the district, to administer any trust declared or created for the benefit of the district, to designate one or more trustees for trusts created by the district, to receive by gift, devise, or bequest, and hold in trust or otherwise, property, including corporate securities of all kinds, situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of the district.

(f) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district, to perform the functions in respect to the legal affairs of the district as the board may direct, and to call upon the district attorney of the county in which the greater part of the land in the district is situated for legal advice and assistance in all matters concerning the district, except that if that county has a county counsel, the directors may call upon the county counsel for legal advice and assistance.

(g) To employ any officers and employees, including architects and consultants, the board of directors deems necessary to carry on properly the business of the district.

(h) To prescribe the duties and powers of the health care facility administrator, secretary, and other officers and employees of any health care facilities of the district, to establish offices as may be appropriate and to appoint board members or employees to those

offices, and to determine the number of, and appoint, all officers and employees and to fix their compensation. The officers and employees shall hold their offices or positions at the pleasure of the boards of directors.

(i) To do any and all things that an individual might do that are necessary for, and to the advantage of, a health care facility and a nurses' training school, or a child care facility for the benefit of employees of the health care facility or residents of the district.

(j) To establish, maintain, and operate, or provide assistance in the operation of, one or more health care facilities or health services, including, but not limited to, outpatient programs, services, and facilities, retirement programs, services, and facilities, chemical dependency programs, services, and facilities, or other health care programs, services, and facilities and activities at any location within or without the district for the benefit of the district and the people served by the district.

"Health care facilities," as used in this subdivision, means those facilities defined in subdivision (b) of Section 32000.1 and specifically includes freestanding chemical dependency recovery units.

(k) To do any and all other acts and things necessary to carry out this division.

(*l*) To acquire, maintain, and operate ambulances or ambulance services within and without the district.

(m) To establish, maintain, and operate, or provide assistance in the operation of, free clinics, diagnostic and testing centers, health education programs, wellness and prevention programs, rehabilitation, aftercare, and any other health care services provider, groups, and organizations that are necessary for the maintenance of good physical and mental health in the communities served by the district.

(n) To establish and operate in cooperation with its medical staff a coinsurance plan between the hospital district and the members of its attending medical staff.

(o) To establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the health care district.

(p) (1) To transfer, at fair market value, any part of its assets to one or more nonprofit corporations to operate and maintain the assets. A transfer pursuant to this paragraph shall be deemed to be at fair market value if an independent consultant, with expertise in methods of appraisal and valuation and in accordance with applicable governmental and industry standards for appraisal and valuation, determines that fair and reasonable consideration is to be received by the district for the transferred district assets. Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the

request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(2) To transfer, for the benefit of the communities served by the district, in the absence of adequate consideration, any part of the assets of the district, including without limitation real property, equipment, and other fixed assets, current assets, and cash, relating to the operation of the district's health care facilities to one or more nonprofit corporations to operate and maintain the assets.

(A) A transfer of 50 percent or more of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if all of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least five properly noticed open and public meetings in compliance with the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, and Section 32106.

(ii) The transfer agreement provides that the hospital district shall approve all initial board members of the nonprofit corporation and any subsequent board members as may be specified in the transfer agreement.

(iii) The transfer agreement provides that all assets transferred to the nonprofit corporation, and all assets accumulated by the corporation during the term of the transfer agreement arising out of or from the operation of the transferred assets, are to be transferred back to the district upon termination of the transfer agreement, including any extension of the transfer agreement.

(iv) The transfer agreement commits the nonprofit corporation to operate and maintain the district's health care facilities and its assets for the benefit of the communities served by the district.

(v) The transfer agreement requires that any funds received from the district at the outset of the agreement or any time thereafter during the term of the agreement be used only to reduce district indebtedness, to acquire needed equipment for the district health care facilities, to operate, maintain, and make needed capital improvements to the district's health care facilities, to provide supplemental health care services or facilities for the communities served by the district, or to conduct other activities that would further a valid public purpose if undertaken directly by the district.

(B) A transfer of 33 percent or more but less than 50 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and Section 32106.

(ii) The transfer agreement meets all of the requirements of clauses (ii) to (v), inclusive, of subparagraph (A).

(C) A transfer of 10 percent or more but less than 33 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and Section 32106.

(ii) The transfer agreement meets all of the requirements of (iii) to (v), inclusive, of subparagraph (A).

(D) Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(E) Notwithstanding the other provisions of this paragraph, a hospital district shall not transfer any portion of its assets to a private nonprofit organization that is owned or controlled by a religious creed, church, or sectarian denomination in the absence of adequate consideration.

(3) If the district board has previously transferred less than 50 percent of the district's assets pursuant to this subdivision, before any additional assets are transferred the board shall hold a public hearing and shall make a public determination that the additional assets to be transferred will not, in combination with any assets previously transferred, equal 50 percent or more of the total assets of the district.

(4) The amendments to this subdivision made during the 1991–92 Regular Session, and the amendments made to this subdivision and to Section 32126 made during the 1993–94 Regular Session, shall only apply to transfers made on or after the effective dates of the acts amending this subdivision. The amendments to this subdivision

made during those sessions shall not apply to any of the following:

(A) A district that has discussed and adopted a board resolution, prior to September 1, 1992, that authorizes the development of a business plan for an integrated delivery system.

(B) A lease agreement, transfer agreement, or both between a district and a nonprofit corporation that were in full force and effect as of September 1, 1992, for as long as that lease agreement, transfer agreement, or both remain in full force and effect.

(5) Notwithstanding paragraph (4), if substantial amendments are proposed to be made to a transfer agreement described in subparagraph (A) or (B) of paragraph (4), the amendments shall be fully discussed in advance of the district board's decision to adopt the amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act, (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(6) Notwithstanding paragraphs (4) and (5), a transfer agreement described in subparagraph (A) or (B) of paragraph (4) that provided for the transfer of less than 50 percent of a district's assets shall be subject to the requirements of subdivision (p) of Section 32121 when subsequent amendments to that transfer agreement would result in the transfer, in sum or by increment, of 50 percent or more of a district's assets to the nonprofit corporation.

(7) For purposes of this subdivision, a "transfer" means the transfer of ownership of the assets of a district. A lease of the real property or the tangible personal property of a district shall not be subject to this subdivision except as specified in Section 32121.4 and as required under Section 32126.

(8) Districts that request a special election pursuant to paragraph (1) or (2) shall reimburse counties for the costs of that special election as prescribed pursuant to Section 23524 of the Elections Code.

(9) Nothing in this section, including subdivision (j), shall be construed to permit a local district to obtain or be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility which is not located within the boundaries of the district.

(10) A transfer of any of the assets of a district to one or more nonprofit corporations to operate and maintain the assets shall not be required to meet paragraphs (1) to (9), inclusive, of this subdivision if all of the following conditions apply at the time of the transfer:

(A) The district has entered into a loan that is insured by the State of California under Chapter 4 (commencing with Section 436) of Part 1 of Division 1.

(B) The district is in default of its loan obligations, as determined by the Office of Statewide Health Planning and Development.

(C) The Office of Statewide Health Planning and Development and the district, in their best judgment, agree the transfer of some or all of the assets of the district to a nonprofit corporation or

corporations is necessary to cure the default, and will obviate the need for foreclosure. This cure of default provision shall be applicable prior to the office foreclosing on district hospital assets. After the office has foreclosed on district hospital assets, or otherwise taken possession in accordance with law, the office may exercise all of its powers to deal with and dispose of hospital property.

(D) The transfer and all arrangements necessary thereto are discussed in advance of the transfer in at least one properly noticed open and public meeting in compliance with the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code and Section 32106. The meeting referred to in this paragraph shall be noticed and held within 90 days of notice in writing to the district by the office of an event of default. If the meeting is not held within this 90-day period, the district shall be deemed to have waived this requirement to have a meeting.

(11) If a transfer under paragraph (10) is a lease, the lease shall provide that the assets shall revert to the district at the conclusion of the leasehold interest. If the transfer is a sale, the proceeds shall be used first to retire the obligation insured by the office, then to retire any other debts of the district. After providing for debts, any remaining funds shall revert to the district.

(q) To contract for bond insurance, letters of credit, remarketing services, and other forms of credit enhancement and liquidity support for its bonds, notes, and other indebtedness and to enter into reimbursement agreements, monitoring agreements, remarketing agreements, and similar ancillary contracts in connection therewith.

(r) To establish, maintain, operate, participate in, or manage capitated health care plans, health maintenance organizations, preferred provider organizations, and other managed health care systems and programs properly licensed by the Department of Insurance or the Department of Corporations, at any location within or without the district for the benefit of residents of communities served by the district. However, that activity shall not be deemed to result in or constitute the giving or lending of the district's credit, assets, surpluses, cash, or tangible goods to, or in aid of, any person, association, or corporation in violation of Section 6 of Article XVI of the California Constitution.

Nothing in this section shall authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions Code.

Any agreement to provide health care coverage that is a health care service plan, as defined in subdivision (f) of Section 1345, shall be subject to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2, unless exempted pursuant to Section 1343 or 1349.2.

A district shall not provide health care coverage for any employee of an employer operating within the communities served by the district, unless the Legislature specifically authorizes, or has

authorized in this section or elsewhere, the coverage.

This section shall not authorize any district to contribute its facilities to any joint venture that could result in transfer of the facilities from district ownership.

(s) To provide health care coverage to members of the district's medical staff, employees of the medical staff members, and the dependents of both groups, on a self-pay basis.

SEC. 7. Section 32121 of the Health and Safety Code is amended to read:

32121. Each local district shall have and may exercise the following powers:

(a) To have and use a corporate seal and alter it at its pleasure.

(b) To sue and be sued in all courts and places and in all actions and proceedings whatever.

(c) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district, and to control, dispose of, convey, and encumber the same and create a leasehold interest in the same for the benefit of the district.

(d) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district.

(e) To establish one or more trusts for the benefit of the district, to administer any trust declared or created for the benefit of the district, to designate one or more trustees for trusts created by the district, to receive by gift, devise, or bequest, and hold in trust or otherwise, property, including corporate securities of all kinds, situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of the district.

(f) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district, to perform the functions in respect to the legal affairs of the district as the board may direct, and to call upon the district attorney of the county in which the greater part of the land in the district is situated for legal advice and assistance in all matters concerning the district, except that if that county has a county counsel, the directors may call upon the county counsel for legal advice and assistance.

(g) To employ any officers and employees, including architects and consultants, the board of directors deems necessary to carry on properly the business of the district.

(h) To prescribe the duties and powers of the health care facility administrator, secretary, and other officers and employees of any health care facilities of the district, to establish offices as may be appropriate and to appoint board members or employees to those offices, and to determine the number of, and appoint, all officers and employees and to fix their compensation. The officers and employees shall hold their offices or positions at the pleasure of the boards of directors.

(i) To do any and all things that an individual might do that are

necessary for, and to the advantage of, a health care facility and a nurses' training school, or a child care facility for the benefit of employees of the health care facility or residents of the district.

(j) To establish, maintain, and operate, or provide assistance in the operation of, one or more health facilities or health services, including, but not limited to, outpatient programs, services, and facilities, retirement programs, services, and facilities, chemical dependency programs, services, and facilities, or other health care programs, services, and facilities and activities at any location within or without the district for the benefit of the district and the people served by the district.

"Health care facilities," as used in this subdivision, means those facilities defined in subdivision (b) of Section 32000.1 and specifically includes freestanding chemical dependency recovery units.

(k) To do any and all other acts and things necessary to carry out this division.

(*l*) To acquire, maintain, and operate ambulances or ambulance services within and without the district.

(m) To establish, maintain, and operate, or provide assistance in the operation of, free clinics, diagnostic and testing centers, health education programs, wellness and prevention programs, rehabilitation, aftercare, and any other health care services provider, groups, and organizations that are necessary for the maintenance of good physical and mental health in the communities served by the district.

(n) To establish and operate in cooperation with its medical staff a coinsurance plan between the hospital district and the members of its attending medical staff.

(o) To establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the health care district.

(p) (1) To transfer, at fair market value, any part of its assets to one or more nonprofit corporations to operate and maintain the assets. A transfer pursuant to this paragraph shall be deemed to be at fair market value if an independent consultant, with expertise in methods of appraisal and valuation and in accordance with applicable governmental and industry standards for appraisal and valuation, determines that fair and reasonable consideration is to be received by the district for the transferred district assets. Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4

(commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(2) To transfer, for the benefit of the communities served by the district, in the absence of adequate consideration, any part of the assets of the district, including without limitation real property, equipment, and other fixed assets, current assets, and cash, relating to the operation of the district's health care facilities to one or more nonprofit corporations to operate and maintain the assets.

(A) A transfer of 50 percent or more of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if all of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least five properly noticed open and public meetings in compliance with the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, and Section 32106.

(ii) The transfer agreement provides that the hospital district shall approve all initial board members of the nonprofit corporation and any subsequent board members as may be specified in the transfer agreement.

(iii) The transfer agreement provides that all assets transferred to the nonprofit corporation, and all assets accumulated by the corporation during the term of the transfer agreement arising out of or from the operation of the transferred assets, are to be transferred back to the district upon termination of the transfer agreement, including any extension of the transfer agreement.

(iv) The transfer agreement commits the nonprofit corporation to operate and maintain the district's health care facilities and its assets for the benefit of the communities served by the district.

(v) The transfer agreement requires that any funds received from the district at the outset of the agreement or any time thereafter during the term of the agreement be used only to reduce district indebtedness, to acquire needed equipment for the district health care facilities, to operate, maintain, and make needed capital improvements to the district's health care facilities, to provide supplemental health care services or facilities for the communities served by the district, or to conduct other activities that would further a valid public purpose if undertaken directly by the district.

(B) A transfer of 33 percent or more but less than 50 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of

Division 2 of Title 5 of the Government Code), and Section 32106.

(ii) The transfer agreement meets all of the requirements of clauses (ii) to (v), inclusive, of subparagraph (A).

(C) A transfer of 10 percent or more but less than 33 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and Section 32106.

(ii) The transfer agreement meets all of the requirements of (iii) to (v), inclusive, of subparagraph (A).

(D) Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(E) Notwithstanding the other provisions of this paragraph, a hospital district shall not transfer any portion of its assets to a private nonprofit organization that is owned or controlled by a religious creed, church, or sectarian denomination in the absence of adequate consideration.

(3) If the district board has previously transferred less than 50 percent of the district's assets pursuant to this subdivision, before any additional assets are transferred the board shall hold a public hearing and shall make a public determination that the additional assets to be transferred will not, in combination with any assets previously transferred, equal 50 percent or more of the total assets of the district.

(4) The amendments to this subdivision made during the 1991–92 Regular Session, and the amendments made to this subdivision and to Section 32126 made during the 1993–94 Regular Session, shall only apply to transfers made on or after the effective dates of the acts amending this subdivision. The amendments to this subdivision made during those sessions shall not apply to any of the following:

(A) A district that has discussed and adopted a board resolution, prior to September 1, 1992, that authorizes the development of a business plan for an integrated delivery system.

(B) A lease agreement, transfer agreement, or both between a

district and a nonprofit corporation that were in full force and effect as of September 1, 1992, for as long as that lease agreement, transfer agreement, or both remain in full force and effect.

(5) Notwithstanding paragraph (4), if substantial amendments are proposed to be made to a transfer agreement described in subparagraph (A) or (B) of paragraph (4), the amendments shall be fully discussed in advance of the district board's decision to adopt the amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act, (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(6) Notwithstanding paragraphs (4) and (5), a transfer agreement described in subparagraph (A) or (B) of paragraph (4) that provided for the transfer of less than 50 percent of a district's assets shall be subject to the requirements of subdivision (p) of Section 32121 when subsequent amendments to that transfer agreement would result in the transfer, in sum or by increment, of 50 percent or more of a district's assets to the nonprofit corporation.

(7) For purposes of this subdivision, a "transfer" means the transfer of ownership of the assets of a district. A lease of the real property or the tangible personal property of a district shall not be subject to this subdivision except as specified in Section 32121.4 and as required under Section 32126.

(8) Districts that request a special election pursuant to paragraph (1) or (2) shall reimburse counties for the costs of that special election as prescribed pursuant to Section 10520 of the Elections Code.

(9) Nothing in this section, including subdivision (j), shall be construed to permit a local district to obtain or be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility which is not located within the boundaries of the district.

(10) A transfer of any of the assets of a district to one or more nonprofit corporations to operate and maintain the assets shall not be required to meet paragraphs (1) to (9), inclusive, of this subdivision if all of the following conditions apply at the time of the transfer:

(A) The district has entered into a loan that is insured by the State of California under Chapter 4 (commencing with Section 436) of Part 1 of Division 1.

(B) The district is in default of its loan obligations, as determined by the Office of Statewide Health Planning and Development.

(C) The Office of Statewide Health Planning and Development and the district, in their best judgment, agree the transfer of some or all of the assets of the district to a nonprofit corporation or corporations is necessary to cure the default, and will obviate the need for foreclosure. This cure of default provision shall be applicable prior to the office foreclosing on district hospital assets. After the office has foreclosed on district hospital assets, or otherwise taken possession in accordance with law, the office may exercise all

of its powers to deal with and dispose of hospital property.

(D) The transfer and all arrangements necessary thereto are discussed in advance of the transfer in at least one properly noticed open and public meeting in compliance with the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code and Section 32106. The meeting referred to in this paragraph shall be noticed and held within 90 days of notice in writing to the district by the office of an event of default. If the meeting is not held within this 90-day period, the district shall be deemed to have waived this requirement to have a meeting.

(11) If a transfer under paragraph (10) is a lease, the lease shall provide that the assets shall revert to the district at the conclusion of the leasehold interest. If the transfer is a sale, the proceeds shall be used first to retire the obligation insured by the office, then to retire any other debts of the district. After providing for debts, any remaining funds shall revert to the district.

(q) To contract for bond insurance, letters of credit, remarketing services, and other forms of credit enhancement and liquidity support for its bonds, notes, and other indebtedness and to enter into reimbursement agreements, monitoring agreements, remarketing agreements, and similar ancillary contracts in connection therewith.

(r) To establish, maintain, operate, participate in, or manage capitated health care plans, health maintenance organizations, preferred provider organizations, and other managed health care systems and programs properly licensed by the Department of Insurance or the Department of Corporations, at any location within or without the district for the benefit of residents of communities served by the district. However, that activity shall not be deemed to result in or constitute the giving or lending of the district's credit, assets, surpluses, cash, or tangible goods to, or in aid of, any person, association, or corporation in violation of Section 6 of Article XVI of the California Constitution.

Nothing in this section shall authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions Code.

Any agreement to provide health care coverage that is a health care service plan, as defined in subdivision (f) of Section 1345, shall be subject to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2, unless exempted pursuant to Section 1343 or 1349.2.

A district shall not provide health care coverage for any employee of an employer operating within the communities served by the district, unless the Legislature specifically authorizes, or has authorized in this section or elsewhere, the coverage.

This section shall not authorize any district to contribute its facilities to any joint venture that could result in transfer of the facilities from district ownership.

(s) To provide health care coverage to members of the district's

medical staff, employees of the medical staff members, and the dependents of both groups, on a self-pay basis.

SEC. 8. Section 32125 of the Health and Safety Code is amended to read:

32125. (a) The board of directors shall be responsible for the operation of all health care facilities owned or leased by the district, according to the best interests of the public health and shall make and enforce all rules, regulations and bylaws necessary for the administration, government, protection and maintenance of health care facilities under their management and all property belonging thereto and may prescribe the terms upon which patients may be admitted thereto. Minimum standards of operation as prescribed in this article shall be established and enforced by the board of directors.

(b) A district shall not contract to care for indigent county patients at below the cost for care. In setting the rates the board shall, insofar as possible, establish rates as will permit the district health care facilities to be operated upon a self-supporting basis. The board may establish different rates for residents of the district than for persons who do not reside within the district.

(c) Notwithstanding any other provision of law, unless prohibited from doing so by action of the board of directors, the chief executive officer may establish a task force to assist the chief executive officer in operating the district's facilities. The chief executive officer shall, if required to do so by action of the board, select task force members from individuals nominated by the board. Once established, the task force may be dissolved by action of the chief executive officer or the board. Any action by the board under this subdivision shall require four votes from a board on which there are five members or five votes from a board on which there are seven members.

SEC. 9. Section 32126 of the Health and Safety Code is amended to read:

32126. (a) The board of directors may provide for the operation and maintenance through tenants of the whole or any part of any hospital acquired or constructed by it pursuant to this division, and for that purpose may enter into any lease agreement that it believes will best serve the interest of the district. A lease entered into with one or more nonprofit corporations for the operation of 50 percent or more of the district's hospital, or that is part of or contingent upon a transfer of 50 percent or more of the district's assets, in sum or by increment, as described in subdivision (p) of Section 32121 shall be subject to the requirements of subdivision (p) of Section 32121. Any lease for the operation of any hospital shall require the tenant or lessee to conform to and abide by Section 32128. No lease for the operation of an entire hospital shall run for a term in excess of 30 years. No lease for the operation of less than an entire hospital shall run for a term in excess of 10 years.

(b) Notwithstanding any other provision of law, a sublease, an assignment of an existing lease, or the release of a tenant or lessee

from obligations under an existing lease in connection with an assignment of an existing lease shall not be subject to the requirements of subdivision (p) of Section 32121 so long as all of the following conditions are met:

(1) The sublease or assignment of the existing lease otherwise remains in compliance with subdivision (a).

(2) The district board determines that the total consideration that the district shall receive following the assignment or sublease, or as a result thereof, taking into account all monetary and other tangible and intangible consideration to be received by the district including, without limitation, all benefits to the communities served by the district, is no less than the total consideration that the district would have received under the existing lease.

(3) The existing lease was entered into on or before July 1, 1984, upon approval of the board of directors following solicitation and review of no less than five offers from prospective tenants.

(4) If substantial amendments are made to an existing lease in connection with the sublease or assignment of that existing lease, the amendments shall be fully discussed in advance of the district board's decision to adopt the amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

SEC. 10. Section 32127.3 is added to the Health and Safety Code, to read:

32127.3. (a) Exclusively for the purpose of securing federal mortgage insurance or federal loans for financing or refinancing the construction of new health facilities, the expansion, modernization, renovation, remodeling, or alteration of existing health facilities, and the initial equipping of those health facilities under the federal mortgage insurance programs as are now or may hereafter become available to a local hospital district, and notwithstanding any provision of this division, or any other provision or holding of law, the board of directors of any district may do either or both of the following:

(1) Borrow money or issue bonds, in addition to other financing methods authorized under this division.

(2) Execute, in favor of the United States or appropriate federal agency, first mortgages, first deeds of trust, or other necessary security interests as the federal government may reasonably require with respect to a health facility project property as security for that insurance.

(b) No payments of principal, interest, insurance premiums and inspection fees, and all other costs of financing obtained as authorized by this section shall be made from funds derived from the district's power to tax.

(c) The Legislature hereby determines and declares that the authorizations for executing the mortgages, deeds of trust, or other necessary security agreements by the board and for the enforcement

of the federal government's rights thereunder are in the public interest in order to preserve and promote the health, welfare, and safety of the people of the state by providing, without cost to the state, a federal mortgage insurance program for health facility construction loans in order to stimulate the flow of private capital into health facilities construction to enable the critical need for new, expanded, and modernized public health facilities to be met.

(d) The Legislature further determines and declares that the United States or appropriate federal agency named as beneficiary of any first mortgage or other security interest delivered as authorized by this section is not a private person or body within the meaning of Section 11 of Article XI of the California Constitution.

SEC. 11. Section 32132 of the Health and Safety Code is amended to read:

32132. (a) Except as otherwise provided in this section, or in Chapter 3.2 (commencing with Section 4217.10) of Division 5 of Title 1 of the Government Code, the board of directors shall let any contract involving an expenditure of more than twenty-five thousand dollars ($25,000) for materials and supplies to be furnished, sold, or leased to the district, or any contract involving an expenditure of more than twenty-five thousand dollars ($25,000) for work to be done, to the lowest responsible bidder who shall give the security the board requires, or else reject all bids.

Except as otherwise provided in this section, for a local health care district that is a small and rural hospital, as defined in Section 1188.855, the board of directors shall acquire materials and supplies that cost more than twenty-five thousand dollars ($25,000), but less than fifty thousand dollars ($50,000), through competitive means, except when the board determines either that (1) the materials and supplies proposed for acquisition are the only materials and supplies that can meet the district's need, or (2) the materials and supplies are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety. As used in this paragraph, "competitive means" has the same meaning as used in subdivision (b) of Section 32138.

(b) Subdivision (a) shall not apply to medical or surgical equipment or supplies, to professional services, or to electronic data processing and telecommunications goods and services.

(c) Bids need not be secured for change orders that do not materially change the scope of the work as set forth in a contract previously made if the contract was made after compliance with bidding requirements, and if each individual change order does not total more than 5 percent of the contract.

(d) As used in this section, "medical or surgical equipment or supplies" includes only equipment or supplies commonly, necessarily, and directly used by, or under the direction of, a physician and surgeon in caring for or treating a patient in a hospital.

(e) Nothing in this section shall prevent any district health care facility from participating as a member of any organization described

in Section 23704 of the Revenue and Taxation Code, nor shall this section apply to any purchase made, or services rendered, by the organization on behalf of a district health care facility that is a member of the organization.

SEC. 12. Section 7 of this bill shall become operative only if this bill and SB 1546 are both chaptered, in which case Section 6 of this bill shall not become operative.

CHAPTER 697

An act to amend and supplement the Budget Act of 1994 (Chapter 139 of the Statutes of 1994) by amending Items 0840-001-001, 1760-001-002, 1760-001-006, 1760-011-001, 3860-001-001, 3860-001-140, 3860-301-001, 4260-001-001, 4260-111 001, 5180-101-001, 5460-101-001, 8350-001-132, 8350-001-223, 8350-015-223, and 8700-001-214 of, and by adding Items 1760-001-450, 1760-491, 3860-495, and 6420-101-001 to, Section 2.00 thereof, and by amending Section 11.55 thereof, relating to the state budget, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994]

LEGISLATIVE COUNSEL'S DIGEST

SB 1287, Alquist. Budget Act of 1994.

Under existing law, as set forth in the Budget Act of 1994, state funds are appropriated for support of state government for the 1994–95 fiscal year.

This bill would supplement and amend the Budget Act of 1994 by: (1) imposing certain conditions upon the requirement that $940,000 in funds appropriated for the support of the Controller be redirected for designated purposes; (2) augmenting appropriations made for the support of the Department of General Services by $441,000 and, as to other appropriations for support of that department, making a reappropriation of funds and establishing a schedule for the allocation of funds; (3) augmenting appropriations made for the support of the Department of Water Resources by $194,000, making revisions in the schedules of appropriations to that department for support and capital outlay, and providing for the reversion of certain moneys to the Environmental License Plate Fund; (4) making revisions in the schedules of appropriations to the Department of Health Services

for support and local assistance; (5) making revisions in the provisions governing apportionment of appropriations to the Department of Social Services for local assistance; (6) making revisions in the schedule of appropriations to the Department of the Youth Authority for local assistance; (7) appropriating $119,000 to the California Postsecondary Education Commission for Pipeline Program grants; (8) augmenting, by a net amount of $30,000, the amount appropriated to the Department of Industrial Relations for support; and (9) augmenting by $9,081,000 the amount appropriated for support services of the State Board of Control pursuant to the statutory program of assistance to victims of crime.

The bill also would revise the Budget Act of 1994 to authorize the Director of Finance to reduce appropriations in the act for new energy projects made from certain funds other than the General Fund, to the extent that those projects qualify for funding from the Petroleum Violation Escrow Account, as specified.

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

Appropriation: yes.

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

SECTION 1. Item 0840-001-001 of Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994) is amended to read:

0840-001-001—For support of State Controller	64,140,000
Schedule:	
(a) 100000-Personal Services	69,387,000
(b) 300000-Operating Expenses and Equipment.....	35,851,000
(c) Reimbursements	−32,980,000
(d) Amount payable from the Motor Vehicle Fuel Account, Transportation Tax Fund (Item 0840-001-061)	−2,766,000
(e) Amount payable from the Highway Users Tax Fund (Item 0840-001-062).....	−786,000
(f) Amount payable from the State School Building Lease-Purchase Fund (Item 0840-001-344)	−579,000
(g) Amount payable from the Client Services Fund (Item 0840-001-365).....	−380,000
(h) Amount payable from the State School Building Aid Fund (Item 0840-001-739)	−123,000

Item		Amount
(i)	Amount payable from the Federal Trust Fund (Item 0840-001-890) ..	−2,404,000
(j)	Amount payable from the State Penalty Fund (Item 0840-001-903)	−906,000
(k)	Amount payable from nongovernmental cost funds, Retail Sales Tax Fund (Item 0840-001-988)	−174,000

Provisions:

1. The appropriation made by this item shall be in lieu of any Cigarette Tax Fund allocation made pursuant to subdivision (b) of Section 30462 of the Revenue and Taxation Code during the 1994–95 fiscal year, and no funds shall be allocated to the Controller pursuant to Section 30462 of the Revenue and Taxation Code during the 1994–95 fiscal year.
2. The appropriation made by this item shall be in lieu of the appropriation in Section 1564 of the Code of Civil Procedure for all costs, expenses, or obligations connected with the administration of the Unclaimed Property Law, with the exception of payment of owners' or holders' claims pursuant to Section 1540, 1542, 1560, or 1561 of the Code of Civil Procedure.
3. Of the claims received for reimbursement of court-ordered or voluntary desegregation programs pursuant to Sections 42243.6, 42247, and 42249 of the Education Code, the Controller shall pay only those claims that have been subjected to audit by school districts in accordance with the Controller's procedures manual for conducting audits of education desegregation claims. Furthermore, the Controller shall pay only those past year actual claims for desegregation program costs that are accompanied by all reports issued by the auditing entity, unless the auditing entity was the Controller.
4. No less than 0.9 personnel-year in the Audits Division shall be used to audit education desegregation claims.
5. The Controller may, with the concurrence of the Director of Finance and the Chairperson of the Joint Legislative Budget Committee, bill affected state departments for activities required

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by State Administrative Manual Section 20050—Administration of Federal Pass-through Funds.

No billing may be sent to affected departments sooner than 30 days after the Chairperson of the Joint Legislative Budget Committee has been notified by the Director of Finance that he or she concurs with the amounts specified in the billings.

6. No moneys appropriated by this act may be expended by the Controller for any of the following:
   (a) An amount in excess of $35,000 for the purpose of providing mailed notice to the apparent owners of escheated property as required by subdivision (e) of Section 1531 of the Code of Civil Procedure.
   (b) An amount in excess of $150,000 for the purpose of publication of notice pursuant to subdivision (a) of Section 1531 of the Code of Civil Procedure. Notwithstanding subdivision (b) of Section 1531 of the Code of Civil Procedure, the Controller may publish notice in any manner that the Controller determines reasonable, provided that: (1) none of the moneys used for these purposes may be redirected from funding for the Controller's audit activities, (2) no photo is used in the publication of notice, and (3) no elected official's name is used in the publication of notice.
   (c) For providing information to the public, other than holders of unclaimed property (as defined in subdivision (e) of Section 1501 of the Code of Civil Procedure), concerning the unclaimed property program or possible existence of unclaimed property held by the Controller's office, except for informational announcements to the news media.
7. The Controller shall increase its audits of the provider billings in the Medi-Cal program in such a manner as to enhance General Fund resources by at least $17,000,000 (in addition to any corresponding enhancement in federal funds).

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8. For a General Fund revenue gain of $59,000,000, the Controller shall redirect $940,000 from its administrative activities to the following activities: sales of securities, inheritance and estate tax collections, and audits of unclaimed property. This provision shall not be operative if the amount of the Controller's support appropriation specified in this item as passed by the Legislature is reduced, or if the Department of Finance determines that the Controller's Office is not a revenue-producing agency for the purpose of receiving an allocation pursuant to Item 9800-001-001.
9. Of the moneys appropriated to the Controller by this act, the Controller shall not expend more than $500,000 to conduct post eligibility fraud audits of the Supplemental Security Income/State Supplementary Payment Program (SSI/SSP) for a General Fund savings of $2,600,000 to the Department of Social Services (Item 5180-111-001).

SEC. 2. Item 1760-001-002 of Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994) is amended to read:

1760-001-002—For support of the Department of General Services, for payment to Item 1760-001-666, payable from the Property Acquisition Law Account, General Fund 1,281,000

SEC. 3. Item 1760-001-006 of Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994) is amended to read:

1760-001-006—For support of Department of General Services, for payment to Item 1760-001-666, payable from the Access for Handicapped Account, General Fund 1,311,000

SEC. 4. Item 1760-001-450 is added to Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994), to read:

1760-001-450—For support of Department of General Services, for payment to Item 1760-001-666, payable from the Seismic Gas Valve Certification Fund..... 80,000

SEC. 5. Item 1760-011-001 of Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994) is amended to read:

1760-011-001—For support of the Department of General Services, for payment to Item 1760-001-666 ... 4,769,000

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Provisions:

1. The funds appropriated by this item are for the following:
   (a) Asbestos Abatement..... 1,679,000
   (b) PCB Program..... 795,000
   (c) Underground Storage Tank Program..... 2,295,000
2. The funds appropriated by this item may also be used for purposes related to the remediation of toxic sites for which the state is responsible, provided that proposals to transfer funds between these programs or for such other purposes shall be submitted in accordance with Section 6.50 of this act. Those proposals shall detail the reasons for the transfer and the impact on the programs for which the transfer is proposed.
3. Notwithstanding any other provision of law, the funds appropriated in this item shall not be transferred into the Architectural Revolving Fund.
4. The funds appropriated in this item are payable to the Service Revolving Fund only for the purposes of facilitating Department of General Services accounting and shall be utilized only as specified in this item.

SEC. 6. Item 1760-491 is added to Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994), to read:

1760-491—Reappropriation, Department of General Services. The balance of funds made available pursuant to Provision 9 of Item 1760-001-666 of Section 2.00 of the Budget Act of 1991 (Ch. 118, Stats. 1991) for alterations and repairs of the legislative office buildings at 1020 N Street and 1021 O Street is hereby reappropriated for only those purposes.

SEC. 7. Item 3860-001-001 of Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994) is amended to read:

3860-001-001—For support of Department of Water Resources..... 15,475,000

Schedule:

(a) 10-Continuing Formulation of the California Water Plan..... 15,796,000
(b) 20-Implementation of the State Water Resources Development System..... 1,175,000

Item	Amount
(c) 30-Public Safety and Prevention of Damage	21,161,000
(d) 40-Services	4,857,000
(e) 50.01-Management and Administration	48,190,000
(f) 50.02-Distributed Management and Administration	−48,190,000
(g) Reimbursements	−9,569,000
(h) Amount payable from the California Environmental License Plate Fund (Item 3860-001-140)	−596,000
(i) Amount payable from the California Water Fund (Item 3860-001-144)	−4,082,000
(j) Amount payable from the Delta Flood Protection Fund (Item 3860-001-176)	−1,697,000
(ja) Amount payable from Public Resources Account, Cigarette and Tobacco Products Surtax Fund (Item 3860-001-235)	−1,000,000
(jx) Amount payable from the Pollution Abatement and Cleanup Account, Water Quality Control Fund (Item 3860-001-679)	−5,213,000
(k) Amount payable from the 1984 State Clean Water Bond Fund (Item 3860-001-740)	−48,000
(*l*) Amount payable from the 1986 Water Conservation and Water Quality Bond Fund (Item 3860-001-744)	−269,000
(m) Amount payable from the Water Conservation Bond Fund of 1988 (Item 3860-001-790)	−315,000
(n) Amount payable from the Federal Trust Fund (Item 3860-001-890)	−2,737,000
(o) Amount payable from the Renewable Resources Investment Fund (Item 3860-001-940)	−1,988,000

Provisions:

1. The amounts appropriated in Items 3860-001-001 to 3860-001-940, inclusive, shall be transferred to the Water Resources Revolving Fund (691) for direct expenditure in such amounts as

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the Department of Finance may authorize, including cooperative work with other agencies.

2. The Department of Water Resources is hereby authorized to offset $24,727,700 of the obligation of the State Water Project to the California Water Fund as authorized by Section 11913 of the Water Code. This continues the offset of the State Water Project's costs for development of public recreation and enhancement of fish and wildlife. This amount represents accumulated costs from July 1, 1990, to June 30, 1993, inclusive.
3. Of the funds appropriated in Schedule (g), an amount not to exceed $740,000 shall be expended for purposes consistent with the Habitat Conservation Fund.
4. Funding from either the State Water Project or the State Water Project contractors shall not be used to supplant the $2,400,000 reduction in Program 10 (Continuing Formulation for the California Water Plan) resulting from the allocation of funds to the City of Los Angeles for the Reclaimed Water Distribution Project for replacement of Mono Lake water.
5. The funds appropriated in this item for support of the Reclamation Board shall not be expended unless the board certifies that board expenditures for construction or maintenance on levees within the boundaries of any city shall occur only if illegal fences or barriers denying legal public access to these levees or interfering with the successful execution, functioning, or operation of the adopted plan of flood control are removed.

SEC. 8. Item 3860-001-140 of Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994) is amended to read:

3860-001-140—For support of Department of Water Resources, for payment to Item 3860-001-001, payable from the California Environmental License Plate Fund 596,000

Provisions:

1. Provision 1 of Item 3860-001-001 shall also be applicable to this item.

Item		Amount
SEC. 9. Item 3860-301-001 of Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994) is amended to read:		
3860-301-001—For capital outlay, Department of Water Resources		3,775,000
Schedule:		
(1) 30.95.010-Sacramento River Bank Protection Project	1,000,000	
(2) 30.95.030-Merced County Streams Project	300,000	
(3) 30.95.090-Cherokee Canal	525,000	
(4) 30.95.105-Marysville/Yuba Levee Reconstruction	3,000,000	
(4.1) 30.95.025-Sacramento-San Joaquin Riparian Purchases	194,000	
(5) Reimbursements	−1,244,000	
Provisions:		
1. The amounts appropriated in Schedules (1) to (5), inclusive, are for acquisition of land, easements, and rights-of-way, including, but not limited to, borrow pits, spoil areas, and easements for levees, clearing, flood control works, and flowage, and for appraisals, surveys, and engineering studies necessary for the completion or operation of the projects in the Sacramento and San Joaquin watersheds as authorized by Section 8617.1 and Chapters 1 (commencing with Section 12570), 2 (commencing with Section 12639), 3 (commencing with Section 12800), 3.5 (commencing with Section 12840), and 4 (commencing with Section 12850) of Part 6 of Division 6 of the Water Code. The amounts appropriated in Schedules (1) to (5), inclusive, are also for advances to the federal government or payments to the federal government or others for incidental construction or reconstruction items that are an obligation of the state in connection with the completion or operation of the projects and for materials and necessary construction, reconstruction, relocation, or alterations to highways, railroads, bridges, powerlines, communication lines, pipelines, irrigation works, and other structures and facilities and for appraisals, surveys, and engineering studies incidental thereto.		

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2. The funds appropriated in Schedules (1) to (5), inclusive, include funding for preliminary plans, working drawings, construction supervision, contract administration, and other work activities to be performed by Department of Water Resources personnel in completion of the projects.
3. Notwithstanding Section 28.00 of this act, funds may be transferred, with the approval of the Department of Finance, between projects specified in Schedules (1) to (5), inclusive, and other Department of Water Resources major capital outlay projects with an active appropriation. The Director of Finance shall notify, in writing, the chairperson of the committee in each house that considers appropriations and the Chairperson of the Joint Legislative Budget Committee, or his or her designee, may determine prior to any transfer.
4. The amount appropriated in Schedules (1) to (5), inclusive, shall not be expended unless the Reclamation Board certifies that these expenditures shall occur on levees only if illegal fences or barriers denying legal public access to these levees or interfering with the successful execution, functioning, or operation of the adopted plan of flood control are prohibited and removed.
5. Of the funds appropriated in Schedule (4.1), an amount not to exceed $194,000 shall be expended for purposes consistent with the Habitat Conservation Fund.

SEC. 10. Item 3860-495 is added to Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994), to read:

3860-495—Reversion, Department of Water Resources.

As of June 30, 1994, the unencumbered balance of the appropriation provided in the following citation shall revert to the fund balance of the fund from which the appropriation was made:

140—Environmental License Plate Fund

(1) Item 3860-301-140(1), Budget Act of 1988, 30.95.025—Sacramento-San Joaquin River Riparian Purchases, as partially reappropriated by the Budget Act of 1993 (Ch. 55, Stats. 1993).

Item		Amount
SEC. 11. Item 4260-001-001 of Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994) is amended to read:		
4260-001-001—For support of Department of Health Services		155,393,000
Schedule:		
(1) 10-Public and Environmental Health	168,955,000	
(2) 20-Health Care Services	333,391,000	
(3) 30.01-Departmental Administration	62,323,000	
(4) 30.02-Departmental Administration Distributed	−60,529,000	
(5) Reimbursements	−17,598,000	
(6) Amount payable from the Breast Cancer Fund (Item 4260-001-004)	−8,931,000	
(7) Amount payable from the Nuclear Planning Assessment Special Account (Item 4260-001-029)	−488,000	
(8) Amount payable from the Motor Vehicle Account, State Transportation Fund (Item 4260-001-044)	−373,000	
(9) Amount payable from the Occupational Lead Poisoning Prevention Account, General Fund (4260-001-070)	−1,481,000	
(10) Amount payable from the Medical Waste Management Fund (Item 4260-001-074)	−830,000	
(11) Amount payable from the Radiation Control Fund (Item 4260-001-075)	−7,471,000	
(12) Amount payable from the Tissue Bank License Fund (Item 4260-001-076)	−190,000	
(13) Amount payable from the Childhood Lead Poisoning Prevention Fund (Item 4260-001-080)	−3,895,000	
(14) Amount payable from the Export Document Program Fund (Item 4260-001-082)	−133,000	
(15) Amount payable from the Radon Contractor Certification Fund (Item 4260-001-092)	−7,000	
(16) Amount payable from the Wine Safety Fund (Item 4260-001-116)	−158,000	

Item		Amount
(17)	Amount payable from the Water Device Certification Special Account (Item 4260-001-129)	−57,000
(18)	Amount payable from the AIDS Vaccine Research and Development Grant Fund (Item 4260-001-135)	−6,000
(19)	Amount payable from the Vital Records Improvement Project Fund (Item 4260-001-137)	−1,546,000
(20)	Amount payable from the Food Safety Fund (Item 4260-001-177)	−2,049,000
(21)	Amount payable from the Environmental Laboratory Improvement Fund (Item 4260-001-179)	−1,942,000
(22)	Amount payable from the Genetic Disease Testing Fund (Item 4260-001-203)	−55,991,000
(23)	Amount payable from the Low-Level Radioactive Waste Disposal Fund (Item 4260-001-227)	−1,250,000
(24)	Amount payable from the Research Account, Cigarette and Tobacco Products Surtax Fund (Item 4260-001-234)	−1,696,000
(25)	Amount payable from the Safe Drinking Water Account, General Fund (Item 4260-001-306)	−7,572,000
(26)	Amount payable from the Registered Environmental Health Specialist Fund (Item 4260-001-335)	−167,000
(27)	Amount payable from the Mosquitoborne Disease Surveillance Account (Item 4260-001-478)	−27,000
(28)	Amount payable from the Emergency Services and Supplemental Payments Fund (Item 4260-001-693)	−103,000
(29)	Amount payable from the California Alzheimer's and Related Disorders Research Fund (Item 4260-001-823)	−389,000

Item		Amount
(30)	Amount payable from the Medi-Cal Inpatient Adjustment Fund (Item 4260-001-834)	−778,000
(31)	Amount payable from the Federal Trust Fund (Item 4260-001-890)	−233,400,000
(32)	Amount payable from the Local Health Capital Expenditure Account, County Health Services Fund (Item 4260-001-900)	−17,000
(33)	Amount payable from the California Breast Cancer Research Fund (Item 4260-001-945)	−202,000

Provisions:

1. Of the total amount of reimbursements in this item, $1,200,000 shall be available for administration, research, and training projects with other state departments as submitted with the 1994–95 Governor's Budget. The Department of Health Services shall process a budget revision for each project through the Department of Finance prior to any expenditure of funds and shall provide notification pursuant to Section 28.00 of this act for any new project or any increase in excess of $200,000 of an identified project.
2. Except as otherwise prohibited by law, the department shall promulgate emergency regulations to adjust the public health fees set by regulation to an amount, such that if the new fees were effective throughout the 1994–95 fiscal year, the estimated revenues would be sufficient to offset at least 95% of the approved program level intended to be supported by such fees. This provision shall not apply to the fees for shellfish certificates. For radioactive materials licenses, the approved program level shall be calculated based on the total approved program level less the portion of the total approved program level attributable to fee-exempt facilities.
3. Effective July 1, 1994, the annual fee for a general acute care hospital, acute psychiatric hospital, special hospital, general acute care rehabilitation hospital and chemical dependency

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recovery hospital shall be $59.89 per bed. Effective July 1, 1994, the annual fee for a skilled nursing facility, intermediate care facility, or intermediate care facility for the developmentally disabled is $155.26 per bed.

Department of Health Services' fees subject to the annual fee adjustment pursuant to subdivision (a) of Section 115 of the Health and Safety Code, shall remain the same as those that were in effect during the 1993–94 fiscal year.

Notwithstanding subdivision (b) of Section 116 of the Health and Safety Code, departmental fees subject to the annual fee adjustment pursuant to subdivision (a) of Section 116 of the Health and Safety Code, shall remain the same as those which were in effect during the 1993–94 fiscal year.

Departmental fees subject to the annual fee increase provisions of subdivision (a) of Section 113 and subdivision (a) of Section 114 of the Health and Safety Code shall be increased 0.5 percent.

4. The Department of Health Services shall establish a system of fees for various services and programs including any voluntary or mandatory population-based screening programs provided by the Genetic Disease Branch. The fee shall be sufficient to cover the total costs of providing all such genetic disease or population-based screening services and programs provided by the Genetic Disease Branch.
5. It is the intent of the Legislature that the Office of the State Registrar be fully supported by fees.
7. In the expenditure of the $5,756,000 augmentation for licensing and certification activities, the department shall give priority to the following activities: (a) expanding the department's ability to monitor compliance with state licensure requirements, (b) resolving the staffing, application processing, and workload issues that exist in the Nurse Aide Certification Unit, and (c) developing a plan, to be provided to the Legislature by March 1, 1995, to address the fee methodology and subsidy issues described in the

Item		Amount
	performance audit conducted by the State Auditor (report number 93020, issues two and three).	
	8. All fee revenues collected for the purposes of providing licensing and certification review and assistance shall only be used to pay for expenditures incurred in providing these services.	
	9. The Education Now And Babies Later Program shall include some discussion of postponing sex until marriage.	

SEC. 12. Item 4260-111-001 of Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994) is amended to read:

4260-111-001—For local assistance, Department of Health Services		286,707,000
Schedule:		
(a) 10.10.010-Vital Records Improvement Project	300,000	
(b) 10.30.030-Health Risk Assessment.	10,500,000	
(c) 10.30.040-Chronic Diseases	16,275,000	
(d) 10.30.050-Communicable Disease Control	53,624,000	
(e) 10.30.060-AIDS	89,369,000	
(f) 20.30-County Health Services	21,530,000	
(g) 20.40-Primary Care and Family Health	789,791,000	
(gx) Reimbursements-Family Health Services, CCS Enrollment Fees, and GHPP Repayments	−724,000	
(h) Reimbursements-Primary Care and Family Health, WIC Rebates and Recoveries	−146,000,000	
(j) Amount payable from the Breast Cancer Fund (Item 4260-111-004)	−9,043,000	
(k) Amount payable from the Childhood Lead Poisoning Prevention Fund (4260-111-080)	−11,677,000	
(*l*) Amount payable from the Vital Records Improvement Fund (Item 4260-111-137)	−300,000	
(m) Amount payable from the Federal Trust Fund (Item 4260-111-890)	−526,938,000	

Item		Amount
Provisions:		
1. Program 10.30.050-Communicable Disease Control:		
(a) Of the funds appropriated in Schedule (d), up to $6,000,000 shall be available for the purposes of funding rate increases to Medi-Cal providers for the administration of childhood immunizations. Upon order of the Director of the Department of Finance, the Controller shall transfer such funds as are necessary between this schedule and Item 4260-101-001.		
(b) Of the aggregate amount of funds appropriated in Schedule (d) of this item and in Schedule (1) of Item 4260-001-001, from the General Fund savings from vaccine for immunization activities, a total of $20,000,000 shall be used for the following programs:		
(1) Development of a statewide network of local immunization tracking systems		3,500,000
(2) Grants for immunization activities, to be made to primary care clinics that are either licensed under paragraph (1) or (2) of subdivision (a) of Section 1204 of the Health and Safety Code or exempt from licensure under subdivision (c) of Section 1206 of the Health and Safety Code		3,000,000
(3) Grants for collaborative, creative efforts designed to identify and immunize children who are not currently receiving services due to cultural, linguistic, or geographic access barriers		3,500,000

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(4) Augmentations to the Child Health and Disability Program and the Medi-Cal program for a reimbursement rate increase for the administration of vaccines 10,000,000

(c) The State Department of Health Services shall, in consultation with the Legislature, associations representing providers of health care services to women and children, advocates for children, and county public and maternal and child health departments, develop both of the following:

(1) Accountability standards for providers participating in immunization activities.

(2) A process for awarding grants pursuant to paragraph (3) of subdivision (b) of this provision.

(d) The State Department of Health Services shall require counties that receive federal or state funds for immunization activities to involve all providers, including private and primary care clinics, in the development of the local immunization action plan.

2. Program 10.30.060-AIDS:

(a) The Office of AIDS, in allocating and processing contracts and grants, shall comply with the same requirements as are established for contracts and grants for other public health programs. Specifically: (1) the office shall develop request-for-proposals that include the standards pursuant to which the proposals will be evaluated; (2) the office shall use an evaluation and selection committee consisting of persons with expertise in reviewing proposals; (3) it may negotiate the terms and conditions of the contracts and grants; (4) it may reject any and all contracts or grants; and (5) it shall publish a timetable and develop appropriate outreach efforts to assure that the request for a proposal reaches appropriate recipients of funds. The contracts or grants administered by the Office of AIDS shall be exempt from the Public Contract Code and

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shall be exempt from approval by the Department of Finance and the State Department of General Services prior to their execution.

(b) The Department of Health Services, Office of AIDS may subsidize the health insurance premiums for persons who are eligible to receive AIDS drug treatment under the AIDS Drug Program, under the following conditions:

(1) The eligible person's health insurance covers drug treatments available through the AIDS Drug Program.

(2) The annual cost of the health insurance premiums do not exceed the annual cost of providing AIDS drugs for the eligible person.

(c) The Department of Health Services, Office of AIDS, shall use behavioral survey data, as provided through AIDS-related research activities conducted by the University of California, in conjunction with epidemiological information to assist in targeting HIV education and prevention efforts.

3. Program 20.30-County Health Services:

(a) Notwithstanding any other provisions of law, any money recovered for previously paid health care services and interest earned by the CMSP fund are hereby appropriated and shall be expended as soon as practicable for medical care and services as defined in the Welfare and Institutions Code.

4. Program 20.40-Primary Care and Family Health:

(a) Notwithstanding the provisions of Section 28.00 of this act, the Department of Finance, upon request by the Department of Health Services, may authorize and approve a budget revision to augment Schedule (h) Primary Care and Family Health, WIC Rebates and Recoveries, in this item for any additional rebate moneys or recoveries that become available for the Women, Infants, and Children (WIC) Supplemental Food Program during this fiscal year.

(b) The Department of Health Services shall

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take all necessary steps to ensure that family planning funds unexpended at the end of the 1994–95 fiscal year be redistributed to the 1994–95 fiscal year family planning contract agencies.

(c) The department shall continue a phased-in transfer of CCS case management activities to dependent counties or to other alternative case management arrangements, including county consortiums, CCS pilot projects, and nonprofit organizations.

(d) Counties may retain 50 percent of total enrollment and assessment fees that are collected by the counties for the CCS program. Fifty percent of the projected enrollment and assessment fee for each county shall be offset from the state's match for that county.

(e) Of the funds appropriated in Schedule (g) or made available pursuant to this provision, $11,500,000 shall be available for expenditure for purposes of the Battered Women's Protection Act of 1994, as enacted by A.B. 167 of the 1993–94 Regular Session or any other legislation in that session.

5. Of the funds appropriated by this item, $3,000,000 shall be used to augment HIV/AIDS education and prevention activities, $1,950,000 shall be used to augment anonymous testing services, and $50,000 shall be used for startup costs for an AIDS food bank operated by a nonprofit agency in the San Gabriel Valley area.

SEC. 13. Item 5180-101-001 of Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994) is amended to read:

5180-101-001—For local assistance, Department of Social Services 3,204,481,000

Schedule:

(a) 10.01.005-Aid to Families with Dependent Children (Family Group and Unemployed Parent) 5,843,718,000

(b) 10.02-Foster Care 726,354,000

(c) 10.03-Non-AFDC Child Support Incentives 53,433,000

(d) 10.05-Aid for Adoption of Children/Adoption Assistance Program 87,778,000

(e) 10.06-Child Care 20,550,000

Item		Amount
(f)	10.07-Refugee Cash Assistance	23,877,000
(g)	Amount payable from the Federal Trust Fund (Item 5180-101-890)	−3,551,229,000

Provisions:

1. No funds appropriated by this item shall be encumbered unless every rule or regulation adopted and every all-county letter issued by the Department of Social Services that adds to the cost of any welfare program is approved by the Department of Finance as to the availability of funds before it becomes effective. In making the determination as to availability of funds to meet the expenditures of a rule, regulation, or all-county letter that would increase the costs of a welfare program, the Department of Finance shall consider the amount of the proposed increase on an annualized basis, the effect the change would have on the expenditure limitations for the program set forth in this act, the extent to which the rule, regulation, or all-county letter constitutes a deviation from the premises under which the expenditure limitations were prepared, and any additional factors relating to the fiscal integrity of the program or the state's fiscal situation.

   Notwithstanding Sections 27.00 and 28.00 of this act, the availability of funds contained in this item for welfare rules, regulations, or all-county letters that add to program costs funded from the General Fund in excess of $500,000 on an annual basis, including those that are the result of a federal regulation but excluding those that are (a) specifically required as a result of the enactment of a federal or state law, or (b) included in the appropriation made by this act, shall not be approved by the Department of Finance sooner than 30 days after notification in writing of the necessity therefor to the chairperson of the committee in each house that considers appropriations and the Chairperson of the Joint Legislative Budget Committee, or such lesser time as the chairperson of the committee, or his or her designee, may in each instance determine.

   Funds appropriated in this item are for welfare programs as they exist on July 1, 1994, con-

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sisting of state and federal statutory law, regulations, and court decisions, if funds necessary to carry out those decisions are specifically appropriated in this act.

For purposes of this provision "welfare" shall mean those program elements under "Welfare Program Operations," as identified in the Governor's Budget.

2. Notwithstanding Chapter 1 (commencing with Section 18000) of Part 6 of Division 9 of the Welfare and Institutions Code, a loan not to exceed $250,000,000 shall be made available from the General Fund, from funds not otherwise appropriated, to cover the federal share of costs of a program (s) when the federal share has not been received by this state prior to the usual time for transmitting that federal share to the counties of this state. This loan from the General Fund shall be repaid when the federal share of costs for the program or programs becomes available.
3. The Department of Finance may authorize the transfer of amounts from this item to Item 5180-002-001 in order to fund the cost of the administrative hearing process associated with changes in aid payments in the Aid to Families with Dependent Children program.
4. The Department of Finance is authorized to approve expenditures in those amounts made necessary by changes in either caseload or payments, or any rule or regulation adopted and any all-county letter issued as a result of the enactment of a federal or state law, the adoption of a federal regulation, or the following of a court decision, during the 1994–95 fiscal year that are within or in excess of amounts appropriated in this act for that year.

   If the Department of Finance determines that the estimate of expenditures will exceed the expenditures authorized for this item, the department shall so report to the Legislature. At such time as the report is made, the amount of the limitation shall be increased by the amount of such excess unless and until otherwise provided by law.
5. Notwithstanding any other provision of law, and pursuant to plans approved by the Department of Finance, the Department of Social Services

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shall reduce Child Support Enforcement Incentive payments in Program 10.03 in order to recoup loan amounts made to the counties pursuant to Provision 3 of Item 5180-001-001 of this act.

6. The Department of Finance may authorize the transfer of amounts from this item to Item 5180-141-001 (a), Program 10.20, County Administration, to reimburse counties for overpayment recovery activities pursuant to Chapter 64 of the Statutes of 1993.
9. The Department of Finance may authorize the transfer of funds, in a total amount not exceeding $32,014,000, from this item to Schedule (e) of Item 5180-151-001, Child Welfare Services, in order to advance funds to participating counties to conduct a program of family reunification and family maintenance services pursuant to Sections 16500.5 and 16500.55 of the Welfare and Institutions Code.
10. Notwithstanding any other provision of law, no funds appropriated in this item shall be used for a cost-of-living adjustment (COLA) for foster care group homes.

SEC. 14. Item 5460-101-001 of Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994) is amended to read:

5460-101-001—For local assistance, Department of the Youth Authority 19,319,000

Schedule:

(a) 20-Institutions and Camps 92,000
(b) 30-Parole Services 19,227,000

Provisions:

1. The amount appropriated by this item is provided for the following purposes:
   a. To pay the transportation costs of persons committed to the Department of the Youth Authority to or between its facilities, including the return of parole violators; provided, that expenditures made under this item shall be charged to either the fiscal year in which the claim is received by the Controller or the fiscal year in which the warrant is issued by the Controller. However, claims shall be filed by local jurisdictions within six months after the end of the month in which the costs are incurred.

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b. To reimburse counties, pursuant to Section 1776 of the Welfare and Institutions Code, for the cost of the detention of Youth Authority parolees who are detained on alleged parole violations, provided that expenditures made under this item shall be charged to either the fiscal year in which the claim is received by the Controller or the fiscal year in which the warrant is issued by the Controller. However, claims shall be filed by local jurisdictions within six months after the end of the month in which the costs are incurred.

c. Of the funds appropriated by this item, $2,000,000 shall be used to support community-based organizations that provide gang violence reduction and intervention services pursuant to AB 2516 of the 1993–94 legislative session. Of these funds, $1,000,000 shall be used to support the Gang Risk Intervention Pilot Program in Los Angeles County and $1,000,000 shall be used to support similar efforts in northern California.

d. Of the funds appropriated in this item, $14,000,000 shall be allocated to the County of Los Angeles to reimburse costs incurred by the probation department for salaries, including overtime benefits deferred during the 1992–93 and 1993–94 fiscal years and projected overtime costs for the 1994–95 fiscal year.

e. Of the funds appropriated in this item, $200,000 shall be allocated to Sonoma County for the operation of juvenile camps and ranches in Sonoma County.

f. Of the funds appropriated in this item, $200,000 shall be allocated to the Greater Vallejo Recreation District for youth programs designated by the district.

SEC. 15. Item 6420-101-001 is added to Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994), to read:

6420-101-001—For local assistance, California Postsecondary Education Commission, for Pipeline Program grants 119,000

SEC. 16. Item 8350-001-132 of Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994) is amended to read:

Item	Amount
8350-001-132—For support of Department of Industrial Relations, for payment to Item 8350-001-001, payable from the Workers' Compensation Managed Care Fund	1,699,000

Provisions:

1. It is the intent of the Legislature that, on and after July 1, 1994, the regulation of workers' compensation health care organizations pursuant to Sections 4600.3 and 4600.5 of the Labor Code be fully supported by fees assessed on certified health care organizations and applicants for certification. The Department of Industrial Relations shall submit a plan to the Joint Legislative Budget Committee to carry out the intent of the Legislature, as set forth in this provision, no later than January 1, 1995.

SEC. 17. Item 8350-001-223 of Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994) is amended to read:

8350-001-223—For support of Department of Industrial Relations, for Workers' Compensation Administration for payment to Item 8350-001-001, payable from the Workers' Compensation Administration Revolving Fund	16,947,000

SEC. 18. Item 8350-015-223 of Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994) is amended to read:

8350-015-223—For support of Department of Industrial Relations, Industrial Medical Council, for payment to Item 8350-001-001, payable from the Workers' Compensation Administration Revolving Fund	491,000

SEC. 19. Item 8700-001-214 of Section 2.00 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994) is amended to read:

8700-001-214—For support of State Board of Control, for support services pursuant to Chapter 5 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code, for payment to Item 8700-001-001, payable from the Restitution Fund	27,518,000

Provisions:

1. The State Board of Control shall report to the Joint Legislative Budget Committee within 30 days after the end of each month on the status of the Victims of Crime Program. This report shall include, but not be limited to, the number of claims received, the number of claims processed, the status of any claim backlog, the status of the claim processing time, staff vacancies, and the condition of the Restitution Fund. The

Item		Amount
	board shall include in its report on claims processed the number of claims "zero awarded" (determined to be eligible for compensation but for which no payment has yet been issued), and the amount of expenses pending on these claims.	

SEC. 20. Section 11.55 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994) is amended to read:

SEC. 11.55. (a) (1) The Director of Finance shall reduce each applicable item of appropriation made in Section 2.00 of this act from the General Fund to each department for which there is a proposed expenditure in the 1994–95 fiscal year from the General Fund for new energy improvement projects, or maintenance projects that are energy efficient, and that qualify for funding from the Petroleum Violation Escrow Account (PVEA), by an amount equal to the amount of PVEA funding for which these projects are respectively qualified.

(2) The reductions in the General Fund appropriations for each project pursuant to paragraph (1) shall not be made by the Director of Finance until a determination has been made by the federal government that the project has qualified for receipt of the PVEA funds during the 1994–95 fiscal year pursuant to federal laws.

(b) The Director of Finance may reduce appropriations made in Section 2.00 of this act from funds other than the General Fund, that constitutionally may be transferred to the General Fund for General Fund expenditure purposes, on the same basis that reductions from the General Fund are authorized under paragraphs (1) and (2) of subdivision (a) of this section. The amount of any reduction made pursuant to this subdivision shall be transferred to the General Fund upon order of the Director of Finance.

(c) There is hereby appropriated for the 1994–95 fiscal year from the PVEA an amount equal to the amount reduced pursuant to subdivisions (a) and (b), which amount shall be allocated by the Director of Finance to each affected department subject to the reduction in subdivisions (a) and (b).

(d) The total amount of reductions made pursuant to this section shall not exceed, for all affected programs, six million dollars ($6,000,000) or the aggregate amount of funds available for the 1994–95 fiscal year from the PVEA, whichever is less.

SEC. 21. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make certain essential revisions to the appropriations made in the Budget Act of 1994 for the support of state and local government for the 1994–95 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 698

An act to amend Sections 19533 and 19617.7 of, and to add Section 19556.5 to, the Business and Professions Code, relating to horseracing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 19533 of the Business and Professions Code, as amended by Chapter 5 of the Statutes of 1994, is amended to read:

19533. (a) Any license granted to an association other than a fair shall be only for one type of racing, thoroughbred, harness, or quarter horse racing as the case may be, except that the board may authorize the entering of thoroughbred and Appaloosa horses in quarter horse races at a distance not exceeding five furlongs at quarter horse meetings, mixed breed meetings, and fair meetings. If the board authorizes the entering of thoroughbred or Appaloosa horses in quarter horse races, the following conditions shall be met:

(1) Any race written for participation by quarter horses, Appaloosas, and thoroughbreds shall be written as quarter horse preferred.

(2) The number of races written as quarter horse preferred at a distance exceeding 870 yards shall not exceed more than three races per program without the consent of the quarter horse horsemen's organization contracting with the association.

(3) More than one-half of the races on any program shall be for quarter horses at a distance not to exceed 550 yards, unless the consent of the quarter horse horsemen's organization is received.

(4) Mixed races with Appaloosa and quarter horses may only be written with the consent of the quarter horse horsemen's organization contracting with the association.

(b) The association that conducts the meeting shall pay to the horsemen's organization representing thoroughbred horsemen an amount for a pension plan for backstretch personnel to be administered by that horsemen's organization equivalent to 1 percent of the amount available to thoroughbred horses for purses. The remainder of the portion shall be distributed as purses. Any redistributable money paid to the board pursuant to Section 19641, which is paid to a welfare fund established by a horsemen's organization from races with both thoroughbred and quarter horses, shall be divided pro rata between the two welfare funds based on the number of thoroughbreds and quarter horses in the race.

(c) (1) Notwithstanding any other provision of law, any association licensed to conduct quarter horse racing may apply to the board for, and the board shall grant, authority to conduct

thoroughbred racing as part of its racing program if all of the following conditions are met:

(A) The thoroughbred races are for a claiming price of not more than five thousand dollars ($5,000), and at a distance of four and one-half furlongs or less. The races may not be stakes, allowance races, or maiden allowance races.

(B) More than one-half of the races on any program shall be for quarter horses at a distance not to exceed 550 yards, unless the consent of the quarter horse horsemen's organization is received.

(C) The consent of the quarter horse horsemen's organization contracting with the association is obtained with respect to the inclusion of thoroughbred racing.

(2) The quarter horse racing association conducting thoroughbred racing pursuant to this subdivision shall pay to a quarter horse horsemen's organization the amount specified in subdivision (e) of Section 19613, and to the horsemen's organization representing thoroughbred horsemen an amount for a pension plan for backstretch personnel to be administered by that horsemen's organization equivalent to 1 percent of the amount available to thoroughbred horses for purses. The remainder of the portion shall be distributed as purses. The quarter horse racing association shall also deduct the appropriate amount to comply with subdivision (a) of Section 19617.2 for distribution to the thoroughbred official registering agency.

(d) This section shall remain in effect only until January 1, 1995, and on that date is repealed, unless a later enacted statute, which is enacted before January 1, 1995, deletes or extends that date.

SEC. 2. Section 19533 of the Business and Professions Code, as amended by Chapter 62 of the Statutes of 1994, is amended to read:

19533. (a) Any license granted to an association other than a fair shall be only for one type of racing, thoroughbred, harness, or quarter horse racing as the case may be, except that the board may authorize the entering of thoroughbred and Appaloosa horses in quarter horse races at a distance not exceeding five furlongs at quarter horse meetings, mixed breed meetings, and fair meetings. If the board authorizes the entering of thoroughbred or Appaloosa horses in quarter horse races, the following conditions shall be met:

(1) Any race written for participation by quarter horses, Appaloosas, and thoroughbreds shall be written as quarter horse preferred.

(2) The number of races written as quarter horse preferred at a distance exceeding 870 yards shall not exceed more than three races per program without the consent of the quarter horse horsemen's organization contracting with the association.

(3) More than one-half of the races on any program shall be for quarter horses at a distance not to exceed 550 yards, unless the consent of the quarter horse horsemen's organization is received.

(4) Mixed races with Appaloosa and quarter horses may only be written with the consent of the quarter horse horsemen's

organization contracting with the association.

(b) The association that conducts the meeting shall pay to a thoroughbred trainers' organization an amount for a pension plan for backstretch personnel to be administered by that trainers' organization equivalent to 1 percent of the amount available to thoroughbred horses for purses. The remainder of the portion shall be distributed as purses. Any redistributable money paid to the board pursuant to Section 19641, which is paid to a welfare fund established by a horsemen's organization from races with both thoroughbred and quarter horses, shall be divided pro rata between the two welfare funds based on the number of thoroughbreds and quarter horses in the race.

(c) (1) Notwithstanding any other provision of law, any association licensed to conduct quarter horse racing may apply to the board for, and the board shall grant, authority to conduct thoroughbred racing as part of its racing program if all of the following conditions are met:

(A) The thoroughbred races are for a claiming price of not more than five thousand dollars ($5,000), and at a distance of four and one-half furlongs or less. The races may not be stakes, allowance races, or maiden allowance races.

(B) More than one-half of the races on any program shall be for quarter horses at a distance not to exceed 550 yards, unless the consent of the quarter horse horsemen's organization is received.

(C) The consent of the quarter horse horsemen's organization contracting with the association is obtained with respect to the inclusion of thoroughbred racing.

(2) The quarter horse racing association conducting thoroughbred racing pursuant to this subdivision shall pay to a quarter horse horsemen's organization the amount specified in subdivision (e) of Section 19613, and an amount for a pension plan for backstretch personnel to be administered by a thoroughbred trainers' organization equivalent to 1 percent of the amount available to thoroughbred horses for purses. The remainder of the portion shall be distributed as purses. The quarter horse racing association shall also deduct the appropriate amount to comply with subdivision (a) of Section 19617.2 for distribution to the thoroughbred official registering agency.

(d) This section shall become operative on January 1, 1995.

SEC. 3. Section 19556.5 is added to the Business and Professions Code, to read:

19556.5. The board shall designate a nonprofit organization that is dedicated to research and development of improved safety standards for horseracing as a beneficiary qualified to receive a distribution pursuant to this article.

SEC. 4. Section 19617.7 of the Business and Professions Code is amended to read:

19617.7. (a) The following definitions govern the construction of this section:

(1) "Breeder" means a person who is registered as the breeder of a California-bred quarter horse with the official registering agency and is named on the applicable Certificate of Registration issued by the American Quarter Horse Association.

(2) "Eligible earnings" means the following:

(A) In the case of breeder premiums, the annual amount earned by a California-bred quarter horse for finishing first or second in qualifying races.

(B) In the case of owners' awards, the annual amount earned by a California-bred quarter horse for finishing first or second in qualifying races.

(C) In the case of stallion awards, the annual amount earned by California-conceived or California-bred foals of an eligible quarter horse sire for finishing first or second in qualifying races.

(D) In order for earnings from a qualifying race to be considered as eligible earnings, a California-bred quarter horse shall be registered as such with the official registering agency before the date entries were taken by the association for the qualifying race in which that horse earned purse money.

(E) For purposes of this paragraph, the maximum purse considered earned in any qualifying race within this state is two hundred thousand dollars ($200,000) for a win, and eighty thousand dollars ($80,000) for a second place finish.

(F) In determining the purse earned in any qualifying race that is a stakes race, the amount earned shall be based on the added money and other sources of the purse, such as nomination, entry, or starting fees, bonuses, and sponsor contributions, or any combination thereof.

(G) On or before February 1 of any year, the stallion owner shall verify with the official registering agency the eligibility of a stallion to receive the stallion award to which the owner is entitled.

(3) "Eligible quarter horse sire" means a quarter horse, or thoroughbred stallion, bred to a quarter horse mare, that was continuously present in this state from February 1 to July 15, inclusive, of the calendar year in which the qualifying race was conducted, and, if the sire left this state after July 15 of the calendar year in which the qualifying race was conducted, the sire returned to and was present in this state by February 1 of the following calendar year and thereafter remained until July 15 of that year. If a sire dies in this state and stood his last season at stud in this state, he shall thereafter continue to be considered an eligible quarter horse sire. Notwithstanding any other provision of law, a quarter horse or thoroughbred stallion shall be considered an eligible quarter horse sire only if its owner has verified the stallion's eligibility with the official registering agency for stallion awards on or before February 1 of the calendar year immediately following the calendar year for which the awards are being distributed.

(4) "Official registering agency" means the Pacific Coast Quarter Horse Racing Association.

(5) "Owner" means the person who is registered with the paymaster of purses on the date the qualifying race was conducted as the owner of the California-bred quarter horse earning purse money in that race.

(6) "Qualifying race" means all quarter horse races in this state.

(7) "Stallion owner" means the person who is the owner of the eligible quarter horse sire as of December 31 of the calendar year in which that sire's foals had eligible earnings or the person who owned the eligible quarter horse sire on the date that the sire died.

(b) Any association conducting a race meeting which includes quarter horse racing shall deposit with the official registering agency 0.2 of 1 percent of the total amount handled ontrack, and 0.4 of 1 percent of the total amount handled offtrack, in daily conventional and exotic parimutuel pools and a sum equal to 25 percent of those funds specified for purses in Sections 19612.1, 19612.2, 19614.2, 19616, and 19616.1 and the sums specified in Sections 19567 and 19617.5, resulting from quarter horse racing. The deposits shall be made at the following intervals:

(1) For any meeting of 20 racing days or less, the requisite deposit shall be made not later than seven days immediately following the last day of that meeting.

(2) For any meeting of more than 20 racing days, the initial deposit shall be made not later than 27 racing days after the commencement of that meeting and every 20 racing days thereafter, with a final deposit made not later than seven days following the last day of that meeting. The initial deposit for that meeting shall be based upon the applicable amount handled during the first 20 racing days of the meeting and deposits thereafter shall be based upon the applicable amount handled during the ensuing periods of 20 racing days with the last deposit being based upon the applicable amount handled from the end of the last 20-racing-day period for which a deposit has been made to the end of the meeting.

(c) After deducting a sum up to, but not to exceed, 10 percent of the total deposits made pursuant to subdivision (b) and the total deposits made pursuant to other provisions of this chapter, including Sections 19612.1, 19612.2, 19614.2, 19616, and 19616.1, to compensate the official registering agency for its administrative costs, the official registering agency shall distribute annually the balance of the deposits in the following manner:

(1) Sixty percent to the breeder fund from which breeder premiums are to be paid.

(2) Twenty-five percent to the owner fund from which owners' awards are to be paid.

(3) Fifteen percent to the stallion fund from which stallion awards are to be paid.

(d) The official registering agency shall make the following payments to the breeder, owner, and stallion owner to encourage agriculture and the breeding of high quality horses in this state:

(1) The breeder shall be paid a sum based on a prorated share of

first and second place earnings from qualified races by a California-bred quarter horse.

(2) The owner shall be paid an owners' award, a sum based on a prorated share of first and second place earnings from qualified races by a California-bred quarter horse.

(3) The stallion owner shall be paid a stallion award, a sum based on a prorated share of first and second place earnings from qualified races by a California-bred quarter horse.

Stallion awards shall not be made to the owner of a sire which has been out of the state for breeding purposes during the calendar year.

(4) The breeder premium, and owners' and stallion awards shall be paid not later than March 31 of the calendar year immediately following the calendar year for which the awards or premiums were earned. Any payments for awards or premiums that are uncashed on December 31 of the year issued, shall accrue to the following year for distribution on an equal basis. All uncashed payments for premiums and awards that have accumulated as of December 31, 1994, shall be paid to the 1995 awards program in accordance with subdivision (c).

(e) The amount remaining for distribution under this section, if any, after the payments are made under subdivision (d) shall be used for the payment of quarter horse breeder premiums and owners' and stallion awards on a prorated percentage based on the win and second place shares of the purse, exclusive of all purse money not derived from the parimutuel pools, to the breeders, owners, and owners of sires of quarter horses who have been officially placed first or second in one or more qualifying races.

(f) If there are insufficient funds to make all of the distributions in this section, there shall be no assessments made against any association to fund the deficiencies.

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

In order for the changes made by this act to apply during the 1994 racing season, it is necessary that this act take effect immediately.

CHAPTER 699

An act to amend, repeal, and add Section 11110 of, and to add and repeal Section 12507.1 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 11110 of the Vehicle Code is amended to read:

11110. The department, after notice and hearing, may suspend or revoke any license issued under this chapter in any of the following cases:

(a) The department finds and determines that the licensee fails to meet the requirements to receive or hold a license under this chapter.

(b) The licensee fails to keep the records required by this chapter.

(c) The licensee permits fraud or engages in fraudulent practices either with reference to the applicant for a driver's license or an all-terrain vehicle safety certificate or the department, or induces or countenances fraud or fraudulent practices on the part of any applicant.

(d) The licensee fails to comply with this chapter or regulation or requirement of the department adopted pursuant thereto.

(e) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to create the impression, or which would reasonably have the effect of leading persons to believe, that the licensee was in fact an employee or representative of the department; or the licensee makes an advertisement, in any manner or by any means, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(f) The licensee, or any employee or agent of the licensee, solicits driver training or instruction or all-terrain vehicle safety instruction in, or within 200 feet of, an office of the department.

(g) The licensee is convicted of violating Section 14606, 20001, 20002, 20003, 20004, 20006, 20008, 23103, 23104, 23152, or 23153 of this code or subdivision (c) of Section 192 of the Penal Code. A conviction, after a plea of nolo contendere, is a conviction within the meaning of this section.

(h) The licensee teaches, or permits a student to be taught, the specific tests administered by the department through use of the department's forms or testing facilities.

(i) The licensee conducts training, or permits training by any employee, in an unsafe manner or contrary to safe driving practices.

(j) The licensed school owner or licensed driving school operator teaches, or permits an employee to teach, driving instruction or all-terrain vehicle safety instruction without a valid instructor's license.

(k) The licensed school owner does not have in effect a bond as required by Section 11102.

(*l*) The licensee permits the use of the license by any other person for the purpose of permitting that person to engage in the ownership or operation of a school or in the giving of driving instruction or all-terrain vehicle safety instruction for compensation.

(m) The licensee holds a secondary teaching credential and explicitly or implicitly recruits or attempts to recruit a pupil who is enrolled in a junior or senior high school to be a customer for any business licensed pursuant to this article that is owned by the licensee

or for which the licensee is an employee.

(n) The licensee or any employee or agent of the licensee administers driving tests or issues certificates of passage in violation of the terms of an agreement entered into under Section 12507.1.

(o) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1998, deletes or extends that date.

SEC. 2. Section 11110 is added to the Vehicle Code, to read:

11110. The department, after notice and hearing, may suspend or revoke any license issued under this chapter in any of the following cases:

(a) The department finds and determines that the licensee fails to meet the requirements to receive or hold a license under this chapter.

(b) The licensee fails to keep the records required by this chapter.

(c) The licensee permits fraud or engages in fraudulent practices either with reference to the applicant for a driver's license or an all-terrain vehicle safety certificate or the department, or induces or countenances fraud or fraudulent practices on the part of any applicant.

(d) The licensee fails to comply with this chapter or regulation or requirement of the department adopted pursuant thereto.

(e) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to create the impression, or which would reasonably have the effect of leading persons to believe, that the licensee was in fact an employee or representative of the department; or the licensee makes an advertisement, in any manner or by any means, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(f) The licensee, or any employee or agent of the licensee, solicits driver training or instruction or all-terrain vehicle safety instruction in, or within 200 feet of, an office of the department.

(g) The licensee is convicted of violating Section 14606, 20001, 20002, 20003, 20004, 20006, 20008, 23103, 23104, 23152, or 23153 of this code or subdivision (c) of Section 192 of the Penal Code. A conviction, after a plea of nolo contendere, is a conviction within the meaning of this section.

(h) The licensee teaches, or permits a student to be taught, the specific tests administered by the department through use of the department's forms or testing facilities.

(i) The licensee conducts training, or permits training by any employee, in an unsafe manner or contrary to safe driving practices.

(j) The licensed school owner or licensed driving school operator teaches, or permits an employee to teach, driving instruction or all-terrain vehicle safety instruction without a valid instructor's license.

(k) The licensed school owner does not have in effect a bond as required by Section 11102.

(*l*) The licensee permits the use of the license by any other person for the purpose of permitting that person to engage in the ownership or operation of a school or in the giving of driving instruction or all-terrain vehicle safety instruction for compensation.

(m) The licensee holds a secondary teaching credential and explicitly or implicitly recruits or attempts to recruit a pupil who is enrolled in a junior or senior high school to be a customer for any business licensed pursuant to this article that is owned by the licensee or for which the licensee is an employee.

(n) This section shall become operative on January 1, 1998.

SEC. 3. Section 12507.1 is added to the Vehicle Code, to read:

12507.1. (a) (1) In enacting this section, it is the intent of the Legislature to implement a pilot program to study the safety and fiscal effects of allowing certain driving schools to conduct the provisional driver's license behind-the-wheel driving test.

(2) The adoption of departmental regulations, training of driving school instructors, and all other functions necessary to prepare for the implementation of the pilot program shall be performed by the department commencing on January 1, 1995,

(b) Commencing on January 1, 1996, the department may allow a driving school that has operated for at least two years in compliance with Chapter 1 (commencing with Section 11100) of Division 5 to administer the behind-the-wheel driving test portion of the examination required by subparagraph (D) of paragraph (1) of subdivision (a) of Section 12804.9 for a provisional driver's license for any person who is 16 years of age or older, but who is less than 18 years of age, if all of the following conditions apply:

(1) The applicant has complied with the requirements of Section 12507.

(2) The tests given by the driving school are the same as those that would otherwise be given by the department.

(3) The driving school enters into an agreement with the department containing, but not limited to, all of the following provisions:

(A) The department shall annually conduct onsite inspections of the testing operations, or more often as the department determines to be necessary.

(B) All driving school examiners shall meet all of the following qualifications:

(i) Have at least 500 hours of instructional experience as a driving school instructor.

(ii) Be at least 25 years of age.

(iii) Have the same qualification and training standards as the department's examiners, to the extent necessary to conduct the driving tests in compliance with department standards.

(C) No driving school examiner shall be qualified to administer the behind-the-wheel test where the individual to be tested has been previously instructed by that examiner in the operation of a vehicle.

(D) No driving school or driving school instructor shall condition

the payment of a fee to the school by an applicant for receiving instruction in the operation of a vehicle or the administration of the behind-the-wheel driving test, or both, upon the passage or failure of the behind-the-wheel driving test.

(E) The driving school requires written assurances from an applicant's parent or guardian that the parent or guardian assumes liability for the applicant during the driving test.

(F) The department may cancel, suspend, or revoke the agreement with the driving school, upon giving 15 days' prior written notice of the proposed action to the driving school, if the department determines that the driving school is failing to comply with the standards for the behind-the-wheel driving test or with any other term of the agreement. Upon receiving that notice, a driving school may request a departmental hearing within 10 days from the date of receipt of the notice.

(G) Any departmental hearing requested by the driving school pursuant to subparagraph (D) shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(H) Any action to appeal or review any order of the department to cancel, suspend, or revoke the agreement shall be brought in a court of competent jurisdiction under Section 1085 of the Code of Civil Procedure, or as otherwise provided by law. The action shall be commenced within 90 days from the effective date of the order.

(4) A driving school that has had its agreement canceled, suspended, or revoked by order of the department may not administer a behind-the-wheel driving test during the period that the order is in effect.

(5) (A) Any driving school that has had its agreement canceled pursuant to subparagraph (D) of paragraph (3) may apply for a new agreement at any time.

(B) The suspension of an agreement pursuant to subparagraph (D) of paragraph (3) shall be for a term of not more than 12 months, as determined by the department in accordance with regulations adopted by the department. After the period of suspension has expired, the agreement shall be reinstated upon request of the driving school if the driving school is in compliance with this section.

(C) (i) The revocation of an agreement pursuant to subparagraph (D) of paragraph (3) shall be for a term of not less than one year. A driving school may apply for a new agreement after the period of revocation has expired, upon submission of proof to the department of correction of the deficiencies or violations that resulted in the revocation.

(ii) The department may permanently revoke an agreement pursuant to subparagraph (D) of paragraph (3) for repeated violations or repeated failures to comply with any standard or provision of the agreement.

(6) The department shall monitor the driving schools and evaluate the benefits and effects on traffic safety of the driving school

testing program. The department shall periodically choose at random and retest driving school-certified provisional license applicants for the purposes of evaluating the program.

(7) Any provisional driver's license applicant who takes and passes a driving test administered by a driving school pursuant to this section shall provide the department with a certificate satisfactory to the department that the applicant has successfully passed the driving test.

(8) The department shall charge a fee not to exceed five dollars ($5) for each certificate provided to the department by an applicant. The amount of the fee shall be sufficient to pay for the actual costs incurred by the department in connection with the monitoring of driving schools and retesting of license applicants pursuant to paragraph (6).

(9) (A) This paragraph applies only to driving schools that have administered both behind-the-wheel training and behind-the-wheel driving tests for at least 12 months.

(B) The department shall prohibit a driving school from continuing to administer behind-the-wheel driving tests if the department determines that the driving school has administered behind-the-wheel training and behind-the-wheel driving tests to applicants, the majority of whom have subsequently been subject to any of the following provisions:

(i) Paragraph (5) of subdivision (a) of Section 12814.6.

(ii) Paragraph (6) of subdivision (a) of Section 12814.6.

(iii) Paragraph (7) of subdivision (a) of Section 12814.6.

(10) The establishment of driving school behind-the-wheel testing agreements may be implemented by the department on those dates that the department determines to be necessary to accomplish an orderly provisional driver's license testing program pursuant to this section.

(11) During each year of the two years of the pilot project authorized by this section, not more than 15,000 applicants for provisional driver's licenses may receive the behind-the-wheel driving test at a driving school that meets the criteria specified in this section.

(12) The department shall submit a report to the Legislature on the progress of the driving school testing program authorized pursuant to this section within three years after the date the program is implemented. The report shall compare subsequent driving records, including accidents, convictions, and failures to appear, for provisional driver's license applicants who have been tested by the driving schools and tested by the department. The report shall include, but shall not be limited to, an analysis of the costs and benefits of the program and shall include recommendations by the department.

(13) The director may terminate the driving school testing program at any time that the department determines that continued operation of the program would have an adverse effect on traffic

safety. The finding upon which that determination is based shall be reported to the Legislature not later than 30 days after the termination of the program.

(14) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 700

An act to amend Sections 47 and 56.10 of the Civil Code, relating to civil proceedings.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. It is the intent of the Legislature in amending Section 47 of the Civil Code to overturn the decision in California Dredging Company v. Insurance Company of North America, 18 Cal. App. 4th 572.

SEC. 2. Section 47 of the Civil Code is amended to read:

47. A privileged publication or broadcast is one made:

(a) In the proper discharge of an official duty.

(b) In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, except as follows:

(1) An allegation or averment contained in any pleading or affidavit filed in an action for marital dissolution or legal separation made of or concerning a person by or against whom no affirmative relief is prayed in the action shall not be a privileged publication or broadcast as to the person making the allegation or averment within the meaning of this section unless the pleading is verified or affidavit sworn to, and is made without malice, by one having reasonable and probable cause for believing the truth of the allegation or averment and unless the allegation or averment is material and relevant to the

issues in the action.

(2) This subdivision does not make privileged any communication made in furtherance of an act of intentional destruction or alteration of physical evidence undertaken for the purpose of depriving a party to litigation of the use of that evidence, whether or not the content of the communication is the subject of a subsequent publication or broadcast which is privileged pursuant to this section. As used in this paragraph, "physical evidence" means evidence specified in Section 250 of the Evidence Code or evidence that is property of any type specified in Section 2031 of the Code of Civil Procedure.

(3) This subdivision does not make privileged any communication made in a judicial proceeding knowingly concealing the existence of an insurance policy or policies.

(4) A recorded lis pendens is not a privileged publication unless it identifies an action previously filed with a court of competent jurisdiction which affects the title or right of possession of real property, as authorized or required by law.

(c) In a communication, without malice, to a person interested therein, (1) by one who is also interested, (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information.

(d) By a fair and true report in a public journal, of (1) a judicial, (2) legislative, or (3) other public official proceeding, or (4) of anything said in the course thereof, or (5) of a verified charge or complaint made by any person to a public official, upon which complaint a warrant has been issued.

(e) By a fair and true report of (1) the proceedings of a public meeting, if the meeting was lawfully convened for a lawful purpose and open to the public, or (2) the publication of the matter complained of was for the public benefit.

SEC. 2.5. Section 47 of the Civil Code is amended to read:

47. A privileged publication or broadcast is one made:

(a) In the proper discharge of an official duty.

(b) In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, except as follows:

(1) An allegation or averment contained in any pleading or affidavit filed in an action for marital dissolution or legal separation made of or concerning a person by or against whom no affirmative relief is prayed in the action shall not be a privileged publication or broadcast as to the person making the allegation or averment within the meaning of this section unless the pleading is verified or affidavit sworn to, and is made without malice, by one having reasonable and probable cause for believing the truth of the allegation or averment and unless the allegation or averment is material and relevant to the

issues in the action.

(2) This subdivision does not make privileged any communication made in furtherance of an act of intentional destruction or alteration of physical evidence undertaken for the purpose of depriving a party to litigation of the use of that evidence, whether or not the content of the communication is the subject of a subsequent publication or broadcast which is privileged pursuant to this section. As used in this paragraph, "physical evidence" means evidence specified in Section 250 of the Evidence Code or evidence that is property of any type specified in Section 2031 of the Code of Civil Procedure.

(3) This subdivision does not make privileged any communication made in a judicial proceeding knowingly concealing the existence of an insurance policy or policies.

(4) A recorded lis pendens is not a privileged publication unless it identifies an action previously filed with a court of competent jurisdiction which affects the title or right of possession of real property, as authorized or required by law.

(c) In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information. This subdivision applies to and includes a communication concerning the job performance or qualifications of an applicant for employment, based upon credible evidence, made without malice, by a current or former employer of the applicant to, and upon request of, the prospective employer. This subdivision shall not apply to a communication concerning the speech or activities of an applicant for employment if the speech or activities are constitutionally protected, or otherwise protected by Section 527.3 of the Code of Civil Procedure or any other provision of law.

(d) By a fair and true report in a public journal, of (1) a judicial, (2) legislative, or (3) other public official proceeding, or (4) of anything said in the course thereof, or (5) of a verified charge or complaint made by any person to a public official, upon which complaint a warrant has been issued.

(e) By a fair and true report of (1) the proceedings of a public meeting, if the meeting was lawfully convened for a lawful purpose and open to the public, or (2) the publication of the matter complained of was for the public benefit.

SEC. 3. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care shall disclose medical information regarding a patient of the provider without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes

of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) When otherwise specifically required by law.

(c) A provider of health care may disclose medical information as follows:

(1) The information may be disclosed to providers of health care or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider as necessary to assist the other provider in obtaining payment for health care services rendered by that provider to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers or for any of the persons or entities specified in paragraph (2). However, no information so

disclosed shall be further disclosed by the recipient in any way which would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, or to licensed health care service plans, or to professional standards review organizations, or to utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, or to persons or organizations insuring, responsible for, or defending professional liability which a provider may incur, if the committees, agents, plans, organizations, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way which would permit identification of the patient.

(8) A provider of health care that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information which:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided it may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy which the patient seeks coverage by or benefits from, if the information was created by the provider of health care as the result of services

conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a group practice prepayment health care service plan by providers which contract with the plan and may be transferred among providers which contract with the plan, for the purpose of administering the plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) To a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms "tissue bank" and "tissue" have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) When the disclosure is otherwise specifically authorized by law.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be released to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 47 of the Civil Code proposed by both this bill and AB 2778. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 47 of the Civil Code, and (3) this bill is enacted after AB 2778, in which case Section 2 of this bill shall not become operative.

CHAPTER 701

An act to amend Section 6363.6 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 6363.6 of the Revenue and Taxation Code is amended to read:

6363.6. There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use or other consumption in this state of, meals and food products for human consumption furnished or served to and consumed by residents or patients of:

(a) A health facility as defined in Section 1250 of the Health and Safety Code, which holds the license required pursuant to Section 1253, or is exempt from the license requirement pursuant to subdivision (a) of Section 1270, or is operated by the United States.

(b) A community care facility as defined in Section 1502 of the Health and Safety Code, which holds the license required by Section 1508, or is a residential facility selected by a licensee pursuant to Section 1506 and exclusively used for the reception and care of persons placed by the licensee, or is exempt from the license requirement pursuant to subdivision (f) of Section 1505, or is operated by the United States.

(c) A residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, that holds the license required by Section 1569.10 of the Health and Safety Code or is exempt from the license requirements pursuant to Section 1569.145 of the Health and Safety Code, or is operated by the United States.

(d) Any house or institution supplying board and room for a flat monthly rate and serving as a principal residence exclusively for persons 62 years of age or older, or any housing that primarily serves older persons and is financed by state or federal programs.

(e) An alcoholism recovery facility, as defined in Section 11834.11 of the Health and Safety Code, which holds the license required by Section 11834.12 of the Health and Safety Code. This subdivision shall apply to meals served by the facility on or after January 1, 1985.

(f) A drug abuse recovery or treatment facility, as defined in Section 11834.11 of the Health and Safety Code, which holds the license required by Section 11834.12 of the Health and Safety Code.

SEC. 2. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 3. This act provides for a tax levy within the meaning of

Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

CHAPTER 702

An act to amend Section 6363.6 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 6363.6 of the Revenue and Taxation Code is amended to read:

6363.6. There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use or other consumption in this state of, meals and food products for human consumption furnished or served to and consumed by residents or patients of:

(a) A health facility, as defined in Section 1250 of the Health and Safety Code, that holds the license required pursuant to Section 1253, or is exempt from the license requirement pursuant to subdivision (a) of Section 1270, or is operated by the United States.

(b) A community care facility, as defined in Section 1502 of the Health and Safety Code, that holds the license required by Section 1508, or is a residential facility selected by a licensee pursuant to Section 1506 and exclusively used for the reception and care of persons placed by the licensee, or is exempt from the license requirement pursuant to subdivision (f) of Section 1505, or is operated by the United States.

(c) A residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, that holds the license required by Section 1569.10 of the Health and Safety Code or is exempt from the license requirements pursuant to Section 1569.145 of the Health and Safety Code, or is operated by the United States.

(d) Any house or institution supplying board and room for a flat monthly rate and serving as a principal residence exclusively for persons 62 years of age or older, and any housing that primarily serves older persons and that is financed by state or federal programs.

(e) An alcoholism recovery facility, as defined in Section 11834.11 of the Health and Safety Code, which holds the license required by Section 11834.12 of the Health and Safety Code. This subdivision shall apply to meals served by the facility on or after January 1, 1985.

(f) A drug abuse recovery or treatment facility, as defined in

Section 11834.11 of the Health and Safety Code, which holds the license required by Section 11834.12 of the Health and Safety Code.

SEC. 2. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

CHAPTER 703

An act relating to pupil transportation.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. (a) It is the intent of the Legislature that California school children be provided the safest means of bus transportation to and from school.

(b) The State Auditor shall perform a study to develop comparable information regarding safety, cost, funding sources, operating and equipment differences, and other related information for schoolbus operators and public transit operators in providing pupil transportation. The State Auditor shall complete a report on the results of the study on or before January 1, 1996, provide copies of the report to relevant policy and fiscal committees of the Legislature, and upon request provide a copy of the report to any Member of the Legislature.

(c) The State Auditor, for the purposes of conducting the study described in subdivision (a), shall consult with representatives of organizations that provide services, or otherwise have a purpose, related to schools, schoolbuses, or public transit, and with any other interested groups or individuals.

(d) The State Auditor is not required to carry out the provisions of this act until sufficient funds from sources other than the state are available.

CHAPTER 704

An act to amend Section 2982 of the Civil Code, to amend Sections 14036, 66503, and 66513 of the Government Code, to amend Section 44241 of the Health and Safety Code, to amend the heading of Article 11 (commencing with Section 20250) of Part 3 of Chapter 1 of Division 2 of, and to amend Section 20250 of, the Public Contract Code, to amend the heading of Part 5 (commencing with Section 50000) of Division 10 of, to amend Sections 5001, 50000, 50002, 50011, 50090, 50503, 99313.6, 99314.6, and 130303 of, and to add Sections 50007, 50075.5, and 50210.5 to, the Public Utilities Code, and to amend Sections 5201, 35251, and 40611 of the Vehicle Code, relating to transportation.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 2982 of the Civil Code is amended to read:

2982. Every conditional sale contract subject to this chapter shall contain the disclosures required by Regulation Z whether or not Regulation Z applies to the transaction. In addition, to the extent applicable, the contract shall contain the other disclosures and notices required by, and shall satisfy the requirements and limitations of, this section. The disclosures required by subdivision (a) may be itemized or subtotaled to a greater extent than as required by that subdivision and shall be made together and in the sequence set forth in that subdivision. All other disclosures and notices may appear in the contract in any location or sequence and may be combined or interspersed with other provisions of the contract.

(a) The contract shall contain the following disclosures, as applicable, which shall be labeled "itemization of the amount financed":

(1) (A) The cash price, exclusive of document preparation fees, taxes imposed on the sale, pollution control certification fees, and the amount charged for a service contract.

(B) The fee to be retained by the seller for document preparation.

(C) The fee charged by the seller for certifying that the motor vehicle complies with applicable pollution control requirements.

(D) Any donation made to a high polluter repair or removal program.

(E) Taxes imposed on the sale.

(F) The amount charged for a service contract.

(G) The total cash price, which is the sum of subparagraphs (A) to (F), inclusive.

(2) An itemization of the amounts to be paid to any public officer for license, certificate of title, motor vehicle smog impact fee, and

registration.

(3) The aggregate amount of premiums agreed, upon execution of the contract, to be paid for policies of insurance included in the contract, excluding the amount of any insurance premium included in the finance charge.

(4) The amount of the state fee for issuance of a certificate of compliance, noncompliance, exemption, or waiver pursuant to any applicable pollution control statute.

(5) A subtotal representing the sum of the foregoing items.

(6) The amount of the buyer's downpayment itemized to show the following:

(A) The net agreed value of the property being traded in.

(B) The amount of any portion of the downpayment to be deferred until not later than the due date of the second regularly scheduled installment under the contract and which is not subject to a finance charge.

(C) The amount of any manufacturer's rebate applied or to be applied to the downpayment.

(D) The remaining amount paid or to be paid by the buyer as a downpayment.

(7) The amount of any administrative finance charge, labeled "prepaid finance charge."

(8) The difference between item (5) and the sum of items (6) and (7), labeled "amount financed."

(b) No particular terminology is required to disclose the items set forth in subdivision (a) except as expressly provided in that subdivision.

(c) If payment of all or a portion of the downpayment is to be deferred, the deferred payment shall be reflected in the payment schedule disclosed pursuant to Regulation Z.

(d) If the downpayment includes property being traded in, the contract shall contain a brief description of that property.

(e) The contract shall contain the names and addresses of all persons to whom the notice required under Section 2983.2 and permitted under Sections 2983.5 and 2984 is to be sent.

(f) (1) Where the contract includes a finance charge determined on the precomputed basis, the contract shall identify the method of computing the unearned portion of the finance charge in the event of prepayment in full of the buyer's obligation and contain a statement of the amount or method of computation of any charge that may be deducted from the amount of any unearned finance charge in computing the amount that will be credited to the obligation or refunded to the buyer. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the actuarial method if the computation will be under that method. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the Rule of 78's, the sum of the digits, or the sum of the periodic time balances method in all other cases,

and those references shall be deemed to be equivalent for disclosure purposes.

(2) Where the contract includes a finance charge which is determined on the simple-interest basis but provides for a minimum finance charge in the event of prepayment in full, the contract shall contain a statement of that fact and the amount of the minimum finance charge or its method of calculation.

(g) (1) Where the contract includes a finance charge which is determined on the precomputed basis and provides that the unearned portion of the finance charge to be refunded upon full prepayment of the contract is to be determined by a method other than actuarial, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is $1 or more. Because of the way the amount of this refund will be figured, the time when you prepay could increase the ultimate cost of credit under this agreement. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(2) Where the contract includes a finance charge which is determined on the precomputed basis and provides for the actuarial method for computing the unearned portion of the finance charge upon prepayment in full, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is $1 or more. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(3) Where the contract includes a finance charge which is determined on the simple-interest basis, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(h) The contract shall contain a notice in at least 8-point boldface type, acknowledged by the buyer, that reads as follows:

"If you have a complaint concerning this sale, you should try to resolve it with the seller.

Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or the Department of Motor Vehicles, Division of Investigations and Occupational Licensing, P.O. Box 93289, Sacramento, California 94232-3890, or any combination thereof.

After this contract is signed, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the seller to make a unilateral change.

_____

Buyer's Signature"

(i) (1) The contract shall contain an itemization of any insurance included as part of the amount financed disclosed pursuant to paragraph (3) of subdivision (a) and of any insurance included as part of the finance charge. The itemization shall identify the type of insurance coverage and the premium charged therefor, and, if the insurance expires before the date of the last scheduled installment included in the repayment schedule, the term of the insurance shall be stated.

(2) If any charge for insurance (other than for credit life or disability) is included in the contract balance and disbursement of any part thereof is to be made more than one year after the date of the conditional sale contract, any finance charge on the amount to be disbursed after one year shall be computed from the month the disbursement is to be made to the due date of the last installment under the conditional sale contract.

(j) (1) The dollar amount of the disclosed finance charge shall not exceed the greater of:

(A) (i) One and one-half percent on so much of the unpaid balance as does not exceed two hundred twenty-five dollars ($225), 1⅙ percent on so much of the unpaid balance in excess of two hundred twenty-five dollars ($225) as does not exceed nine hundred dollars ($900), ⅚ of 1 percent on so much of the unpaid balance in excess of nine hundred dollars ($900) as does not exceed one thousand six hundred fifty dollars ($1,650), and $^{13}/_{24}$ of 1 percent on that portion of the unpaid balance which exceeds one thousand six hundred fifty dollars ($1,650); or

(ii) One percent of the entire unpaid balance; multiplied in either case by the number of months (computed on the basis of a full month for any fractional month period in excess of 15 days) elapsing between the date of the contract and the due date of the last installment; or

(B) If the finance charge is determined by the precomputed basis, twenty-five dollars ($25); or

(C) If the finance charge or a portion thereof is determined by the simple-interest basis:

(i) Twenty-five dollars ($25) if the unpaid balance does not exceed one thousand dollars ($1,000), (ii) fifty dollars ($50) if the unpaid balance exceeds one thousand dollars ($1,000) but does not exceed two thousand dollars ($2,000), or (iii) seventy-five dollars ($75) if the unpaid balance exceeds two thousand dollars ($2,000).

(2) The holder of the contract shall not charge, collect, or receive a finance charge which exceeds the disclosed finance charge, except to the extent (A) caused by the holder's receipt of one or more payments under a contract which provides for determination of the finance charge or a portion thereof on the 365-day basis at a time or times other than as originally scheduled whether or not the parties enter into an agreement pursuant to Section 2982.3, (B) permitted by paragraph (2), (3), or (4) of subdivision (c) of Section 226.17 of Regulation Z, or (C) permitted by subdivisions (a) and (c) of Section 2982.8.

(3) If the finance charge or a portion thereof is determined by the simple-interest basis and the amount of the unpaid balance exceeds five thousand dollars ($5,000), the holder of the contract may, in lieu of its right to a minimum finance charge under subparagraph (C) of paragraph (1), charge, receive, or collect on the date of the contract an administrative finance charge not to exceed seventy-five dollars ($75), provided that the sum of the administrative finance charge and the portion of the finance charge determined by the simple-interest basis shall not exceed the maximum total finance charge permitted by subparagraph (A) of paragraph (1). Any administrative finance charge which is charged, received, or collected by a holder shall be deemed a finance charge earned on the date of the contract.

(4) When a contract provides for unequal or irregular payments, or payments on other than a monthly basis, the maximum finance charge shall be at the effective rate provided for in paragraph (1), having due regard for the schedule of installments.

(k) The contract may provide that for each installment in default for a period of not less than 10 days the buyer shall pay a delinquency charge in an amount not to exceed in the aggregate 5 percent of the delinquent installment, which amount may be collected only once on any installment regardless of the period during which it remains in default. Payments timely received by the seller under an extension or deferral agreement shall not be subject to a delinquency charge unless the charge is permitted by Section 2982.3. The contract may provide for reasonable collection costs and fees in the event of delinquency.

(*l*) Notwithstanding any provision of a contract to the contrary, the buyer may pay at any time before maturity the entire indebtedness evidenced by the contract without penalty. In the

event of prepayment in full:

(1) If the finance charge was determined on the precomputed basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, provided, however, that the buyer shall be entitled to a refund credit in the amount of the unearned portion of the finance charge, except as provided in paragraphs (3) and (4). The amount of the unearned portion of the finance charge shall be at least as great a proportion of the finance charge, including any additional finance charge imposed pursuant to Section 2982.8 or other additional charge imposed because the contract has been extended, deferred, or refinanced, as the sum of the periodic monthly time balances payable more than 15 days after the date of prepayment bears to the sum of all the periodic monthly time balances under the schedule of installments in the contract or, if the contract has been extended, deferred, or refinanced, as so extended, deferred, or refinanced. Where the amount of the refund credit is less than one dollar ($1), no refund credit need be made by the holder. Any refund credit may be made in cash or credited to the outstanding obligations of the buyer under the contract.

(2) If the finance charge or a portion thereof was determined on the simple-interest basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, including any earned finance charges which are unpaid as of that date and, if applicable, the amount provided in paragraph (3), and provided further that in cases where a finance charge is determined on the 360-day basis, the payments theretofore received will be assumed to have been received on their respective due dates regardless of the actual dates on which the payments were received.

(3) Where the minimum finance charge provided by subparagraph (B) or subparagraph (C) of paragraph (1) of subdivision (j), if either is applicable, is greater than the earned finance charge as of the date of prepayment, the holder shall be additionally entitled to the difference.

(4) The provisions of this subdivision shall not impair the right of the seller or the seller's assignee to receive delinquency charges on delinquent installments and reasonable costs and fees as provided in subdivision (k) or extension or deferral agreement charges as provided in Section 2982.3.

(5) Notwithstanding any provision of a contract to the contrary, whenever the indebtedness created by any contract is satisfied prior to its maturity through surrender of the motor vehicle, repossession of the motor vehicle, redemption of the motor vehicle after repossession, or any judgment, the outstanding obligation of the buyer shall be determined as provided in paragraph (1) or (2); provided further that the buyer's outstanding obligation shall be computed by the holder as of the date the holder recovers the value of the motor vehicle through disposition thereof or judgment is entered or, if the holder elects to keep the motor vehicle in satisfaction of the buyer's indebtedness, as of the date the holder

takes possession of the motor vehicle.

(m) Notwithstanding any other provision of this chapter to the contrary, any information required to be disclosed in a conditional sale contract under this chapter may be disclosed in any manner, method, or terminology required or permitted under Regulation Z, as in effect at the time that disclosure is made, except that permitted by paragraph (2) of subdivision (c) of Section 226.18 of Regulation Z, provided that all of the requirements and limitations set forth in subdivision (a) of this section are satisfied. Nothing in this chapter prohibits the disclosure in that contract of additional information required or permitted under Regulation Z, as in effect at the time that disclosure is made.

(n) If the seller imposes a fee for document preparation, the contract shall contain a disclosure that the fee is not a governmental fee.

(o) No seller may impose an application fee for a transaction governed by this chapter.

(p) The seller or holder may charge and collect a fee not to exceed fifteen dollars ($15) for the return by a depository institution of a dishonored check, negotiated order of withdrawal, or share draft issued in connection with the contract, if the contract so provides or if the contract contains a generalized statement that the buyer may be liable for collection costs incurred in connection with the contract.

(q) The contract shall disclose on its face, by printing the word "new" or "used" within a box outlined in red, that is not smaller than one-half inch high and one-half inch wide, whether the vehicle is sold as a new vehicle, as defined in Section 430 of the Vehicle Code, or a used vehicle, as defined in Section 665 of the Vehicle Code.

(r) The contract shall contain a notice with a heading in at least 12-point bold type and the text in at least 10-point bold type, circumscribed by a line, immediately above the contract signature line, that reads as follows:

THERE IS NO COOLING OFF PERIOD

California law does not provide for a "cooling off" or other cancellation period for vehicle sales. Therefore, you cannot later cancel this contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign below, you may only cancel this contract with the agreement of the seller or for legal cause, such as fraud.

SEC. 2. Section 14036 of the Government Code is amended to read:

14036. The department shall prepare a 10-year rail passenger program biennially for submission to the Legislature, the Governor, the Public Utilities Commission, and the California Transportation Commission. The plan shall be submitted to the commission on or before October 1, 1995, and on or before October 1 of each odd-numbered year thereafter, for its advice and consent, and to the Legislature, the Governor, and the Public Utilities Commission by the following March 1. The program shall consist of all of the following:

(a) For capital and operating subsidies and costs, all actual encumbrances for the prior two fiscal years; and for state operations, all actual expenditures for the prior two fiscal years. All revenues shall be identified by source.

(b) For capital and operating subsidies, estimated encumbrances and revenues for the current year; and for state operations, estimated expenditures for the current year. The department shall use the same format as is required for prior year expenditures pursuant to subdivision (a).

(c) For the budget year and the nine following fiscal years, proposed encumbrances for capital and operating subsidies and costs shall be reported in the same format as is required for the prior year's expenditures. For state operations, proposed expenditures for the budget year shall be reported.

(d) The identification and cost of capital facilities necessary to enhance competitiveness of rail passenger services, including, for each intercity route, a list of at least the three highest priority capital improvement projects, with cost estimates and a funding plan.

(e) A performance evaluation of all services in operation for the two prior years, including performance trends, potential for efficiency and effectiveness, possible improvements, and strategies to achieve that potential. This shall include an evaluation of all feeder bus services, using, among other things, criteria based on ridership levels, break-even points, and levels of growth in service utilization. The number of daily feeder bus runs, if any, that failed to carry even one passenger shall be identified.

(f) A recommendation of a level of and program for services over a 10-year period, including a list of service enhancements on existing and additional routes, with funding and priority recommendations. This shall include identification of feeder bus service improvements and a management and operating plan for achieving these improvements.

(g) An evaluation of reports by regional planning agencies and county transportation commissions on commuter service alternatives in their regions, including presentation of their recommendations.

(h) A map showing all existing intercity and commuter passenger rail routes and services, all proposed intercity and commuter passenger rail routes and services, and all intercity and commuter passenger rail routes and services that are the subject of feasibility

studies.

(i) A report on the expenditure of marketing activities funds for purchases of media advertising of rail passenger services.

This report shall be prepared in consultation with the Public Utilities Commission and the National Rail Passenger Corporation. The department may consult with other agencies, organizations, and persons with expertise. The department shall employ realistic assumptions, using Public Utilities Commission cost data whenever possible, with respect to the level of services it can provide and the cost of these services when developing the program.

(j) A discussion of the department's overall marketing strategy as it relates to the intercity rail passenger service, including feeder bus service, and a report on the expenditure of marketing activities funds for purchases of media advertising of rail passenger services.

(k) A discussion of fare policies and practices, including all of the following:

(1) The relationship of fare policies to ridership and yield, including the impact of (A) a variety of regular fares, including fares such as midweek and other off-peak discounts, (B) discount fare blackouts during certain holiday travel periods on yield and ridership, and (C) discount fares for small groups traveling together.

(2) Lightly travelled route segments where current fares are too high for the demand, and where ridership or yield, or both, would increase with lower fares.

(3) A potential fare policy that would maximize both ridership and yield.

(4) A summary of discussions with Amtrak on the subject of fares.

SEC. 3. Section 66503 of the Government Code is amended to read:

66503. The commission shall consist of 19 members as follows:

(a) Two members each from the City and County of San Francisco and the Counties of Alameda, Contra Costa, San Mateo, and Santa Clara. With respect to the members from San Francisco, the mayor shall appoint one member and the board of supervisors shall appoint one member. With respect to the members from Alameda, Contra Costa, San Mateo, and Santa Clara Counties, the city selection committee organized in each county pursuant to Article 11 (commencing with Section 50270) of Chapter 1 of Part 1 of Division 1 of Title 5, shall appoint one member and the board of supervisors shall appoint one member.

(b) One member each from Marin, Napa, Solano, and Sonoma Counties. The city selection committee of these counties shall furnish to the board of supervisors the names of three nominees and the board of supervisors shall appoint one of the nominees to represent the county.

(c) One representative each appointed by the Association of Bay Area Governments and the San Francisco Bay Conservation and Development Commission.

(d) One representative, who shall be a nonvoting member,

appointed by the Secretary of the Business, Transportation and Housing Agency.

(e) One representative each appointed by the United States Department of Transportation and Department of Housing and Urban Development, provided such representatives shall serve only if the agencies they represent are amenable to such appointments. These representatives shall be nonvoting members.

Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.

SEC. 3.5. Section 66503 of the Government Code is amended to read:

66503. The commission shall consist of 19 members as follows:

(a) Two members each from the City and County of San Francisco and the Counties of Alameda, Contra Costa, San Mateo, and Santa Clara. With respect to the members from San Francisco, the mayor shall appoint one member and the board of supervisors shall appoint one member. With respect to the members from Alameda, Contra Costa, San Mateo, and Santa Clara Counties, the city selection committee organized in each county pursuant to Article 11 (commencing with Section 50270) of Chapter 1 of Part 1 of Division 1 of Title 5, shall appoint one member and the board of supervisors shall appoint one member.

(b) One member each from Marin, Napa, Solano, and Sonoma Counties. The city selection committee of these counties shall furnish to the board of supervisors the names of three nominees and the board of supervisors shall appoint one of the nominees to represent the county.

(c) One representative each appointed by the Association of Bay Area Governments and the San Francisco Bay Conservation and Development Commission.

(d) One representative, who shall be a nonvoting member, appointed by the Secretary of the Business, Transportation and Housing Agency.

(e) One representative each appointed by the United States Department of Transportation and Department of Housing and Urban Development. However, these representatives shall serve only if the agencies they represent are amenable to these appointments. These representatives shall be nonvoting members.

(f) Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.

SEC. 4. Section 66513 of the Government Code is amended to read:

66513. The regional transportation plan shall be subjected to continuous review by the commission, with revisions prepared as the need may arise. The commission shall adopt biennial revisions to the plan, consistent with Section 65080.

SEC. 5. Section 44241 of the Health and Safety Code is amended

to read:

44241. (a) Fee revenues generated under this chapter in the bay district shall be subvened to the bay district by the Department of Motor Vehicles after deducting its administrative costs pursuant to Section 44229.

(b) Fee revenues generated under this chapter shall be allocated by the bay district to implement the following transportation control projects and programs that are included in the plan adopted pursuant to Sections 40233 and 40717:

(1) The implementation and enforcement of local ridesharing and employer-based trip reduction ordinances and programs. As used in this paragraph, "implementation" includes district review of employer-based trip reduction plans submitted by a school district.

(2) The purchase or lease of clean fuel buses for school districts and transit operators.

(3) The provision of local feeder bus or shuttle service to rail and ferry stations and to airports.

(4) The implementation and maintenance of local arterial traffic management, including, but not limited to, signal timing, transit signal preemption, bus stop relocation and "smart streets."

(5) Implementation of rail-bus integration and regional transit information systems.

(6) Implementation of demonstration projects in telecommuting, congestion pricing of highways, bridges, and public transit, and alternative fuel vehicles.

(7) Implementation of a smoking vehicles program.

(8) Implementation of an automobile buy-back scrappage program operated by a governmental agency.

(c) Fee revenue generated under this chapter shall be allocated by the district for projects and programs specified in subdivision (b) to cities, counties, the Metropolitan Transportation Commission, transit districts, or any other public agency responsible for implementing one or more of the specified projects or programs. Fee revenues shall not be used for any planning activities that are not directly related to the implementation of a specific project or program.

(d) Not less than 40 percent of fee revenues shall be allocated to the entity or entities designated pursuant to subdivision (e) for projects and programs in each county within the bay district based upon the county's proportionate share of fee-paid vehicle registration.

(e) In each county, one or more entities may be designated as the overall program manager for the county by resolutions adopted by the county board of supervisors and the city councils of a majority of the cities representing a majority of the population in the incorporated area of the county. The resolution shall specify the terms and conditions for the expenditure of funds. The entities so designated shall be allocated the funds pursuant to subdivision (d) in accordance with the terms and conditions of the resolution.

SEC. 6. The heading of Article 11 (commencing with Section 20250) of Part 3 of Chapter 1 of Division 2 of the Public Contract Code is amended to read:

Article 11. San Joaquin Regional Transit District

SEC. 7. Section 20250 of the Public Contract Code is amended to read:

20250. This article applies to contracts by the San Joaquin Regional Transit District, as provided for in Part 5 (commencing with Section 50000) of Division 10 of the Public Utilities Code.

SEC. 8. Section 5001 of the Public Utilities Code is amended to read:

5001. This chapter is enacted for the following purposes:

(a) Creating a special fund to administer and enforce the commission's jurisdiction to regulate the rates of transportation agencies carrying property for compensation.

(b) Creating a fund to be administered by the Department of the California Highway Patrol for use by the department and other enforcement agencies to deter commercial motor vehicle cargo thefts and provide safety and security of highway carriers and cargoes throughout the state.

SEC. 9. The heading of Part 5 (commencing with Section 50000) of Division 10 of the Public Utilities Code is amended to read:

PART 5. SAN JOAQUIN REGIONAL TRANSIT DISTRICT

SEC. 10. Section 50000 of the Public Utilities Code is amended to read:

50000. This part shall be known and cited as the "San Joaquin Regional Transit District Act."

SEC. 11. Section 50002 of the Public Utilities Code is amended to read:

50002. "District" means the San Joaquin Regional Transit District formed under this part.

SEC. 12. Section 50007 is added to the Public Utilities Code, to read:

50007. For purposes of this part, "Stockton Metropolitan Area" means that area which was included within the boundaries of the Stockton Metropolitan Transit District, immediately prior to that district being expanded to include all of San Joaquin County.

SEC. 13. Section 50011 of the Public Utilities Code is amended to read:

50011. The San Joaquin Regional Transit District may be created as provided in this part and when so created may exercise the powers herein granted.

SEC. 14. Section 50075.5 is added to the Public Utilities Code, to read:

50075.5. All new intercity, interregional, and rural services

provided outside the Stockton Metropolitan Area shall be subject to open competitive bidding at least once every five years. For the bidding, the district may be one of the bidders. The district shall cause notice inviting bids to be published at least once in a newspaper of general circulation within San Joaquin County, which publication shall be made at least 10 days before bids are to be received. The contract for service shall be let to the lowest responsible bidder. The board may reject any and all bids and may readvertise in its discretion.

SEC. 15. Section 50090 of the Public Utilities Code is amended to read:

50090. The enacting clause of all ordinances shall be as follows: "Be it enacted by the board of directors of San Joaquin Regional Transit District:" All ordinances shall be signed by the chairperson of the board or the vice chairperson and attested by the secretary.

SEC. 16. Section 50210.5 is added to the Public Utilities Code, to read:

50210.5. The district may only levy and collect taxes pursuant to this article within the Stockton Metropolitan Area, as defined in Section 50007.

SEC. 17. Section 50503 of the Public Utilities Code is amended to read:

50503. The ballots for the election shall contain substantially the instructions required to be printed on ballots for use at general state and county elections and in addition the following:

Shall the San Joaquin Regional Transit District be dissolved?	YES	
	NO	

SEC. 18. Section 99313.6 of the Public Utilities Code is amended to read:

99313.6. (a) Except as provided in subdivision (b), each transportation planning agency and county transportation commission, and the San Diego Metropolitan Transit Development Board, shall create a state transit assistance fund and deposit therein the funds allocated to it pursuant to Sections 99313 and 99314 for allocations to operators, and to claimants for the purposes specified in Section 99275 and in subdivisions (b), (c), (d), and (e) of Section 99400, within the area on which its allocation was determined.

(b) From funds allocated to it pursuant to Sections 99313 and 99314, the Los Angeles County Transportation Commission may allocate funds to itself for the planning, design, and construction of an exclusive public mass transit guideway system.

(c) An allocation of funds from a state transit assistance fund for a transit capital project may be used for the payment of the principal of, and interest on, equipment trust certificates, bonded or other

indebtedness, or in accomplishment of a defeasance of any outstanding revenue bond indenture issued for that project.

(d) From funds allocated to it pursuant to Section 99313, the Metropolitan Transportation Commission may allocate funds to itself for projects to achieve regional transit coordination objectives.

SEC. 19. Section 99314.6 of the Public Utilities Code is amended to read:

99314.6. Except as provided in Section 99314.7, the following eligibility standards apply:

(a) Except as provided in subdivision (b), funds shall not be allocated for operating purposes pursuant to Sections 99313 and 99314 to an operator unless the operator meets either of the following efficiency standards:

(1) The operator's total operating cost per revenue vehicle hour in the latest year for which audited data are available does not exceed the sum of the preceding year's total operating cost per revenue vehicle hour and an amount equal to the product of the percentage change in the Consumer Price Index for the same period multiplied by the preceding year's total operating cost per revenue vehicle hour.

(2) The operator's average total operating cost per revenue vehicle hour in the latest three years for which audited data are available does not exceed the sum of the average of the total operating cost per revenue vehicle hour in the three years preceding the latest year for which audited data are available and an amount equal to the product of the average percentage change in the Consumer Price Index for the same period multiplied by the average total operating cost per revenue vehicle hour in the same three years.

(b) The transportation planning agency, county transportation commission, or the San Diego Metropolitan Transit Development Board, as the case may be, may adjust the calculation of operating costs and revenue vehicle hours pursuant to subdivision (a) to account for either or both of the following factors as it deems appropriate to encourage progress in achieving the objectives of efficiency, effectiveness, and productivity pursuant to Section 99244:

(1) Exclusion of costs increases beyond the change in the Consumer Price Index for fuel, alternative fuel programs, insurance, or state or federal mandates.

(2) Exclusion of startup costs for new services for a period of not more than two years.

(c) Funds withheld from allocation to an operator pursuant to subdivision (a) shall be retained by the transportation planning agency, county transportation commission, or the San Diego Metropolitan Transit Development Board, as the case may be, for reallocation to that operator for two years following the year of ineligibility. In a year in which an operator's funds are fully allocated pursuant to subdivision (a), funds withheld from allocation during a preceding year shall also be fully allocated. Funds not allocated

before the commencement of the third year following the year of ineligibility shall be reallocated to cost-effective high priority regional transit activities, as determined by the transportation planning agency, county transportation commission, or the San Diego Metropolitan Transit Development Board, as the case may be. If that agency or commission, or the board, determines that no cost-effective high priority regional transit activity exists, the unallocated funds shall revert to the Controller for reallocation.

(d) As used in this section, the following terms have the following meanings:

(1) "Operating cost" means the total operating cost as reported by the operator under the Uniform System of Accounts and Records, pursuant to Section 99243 and subdivision (a) of Section 99247.

(2) "Revenue vehicle hours" has the same meaning as "vehicle service hours," as defined in subdivision (h) of Section 99247.

(3) "Consumer Price Index," as applied to an operator, is the regional Consumer Price Index for that operator's region, as published by the United States Bureau of Labor Statistics. If a regional index is not published, the index for the State of California applies.

(4) "New service" has the same meaning as "extension of public transportation services" as defined in Section 99268.8.

(e) The Legislature finds and declares that the Loma Prieta Earthquake of 1989 caused damage to commercial property and employment losses, with consequent reductions in sales tax revenues, within the Santa Cruz Metropolitan Transit District to the economic detriment of that district. Accordingly, that district shall be exempt from this section until July 1, 1998.

SEC. 20. Section 130303 of the Public Utilities Code is amended to read:

130303. With respect to the area under its jurisdiction, the commission shall be responsible for short-range capital and service planning directed to:

(a) Determination, on an annual basis, of the total amount of funds that could be available to the commission for transportation planning and development.

(b) Development and approval of a short-range three- to five-year transportation improvement program with an annual updated element reflecting all transportation capital and service priorities within the jurisdiction of the commission to be developed with all appropriate coordination and cooperation between the commission and state and local transportation agencies and operators. All projects utilizing federal and state highway and transit funds, and all exclusive public mass transit guideway projects no matter how funded, shall be included in a transportation improvement program adopted by the commission. The program shall also be developed in coordination with the multicounty designated transportation planning agency and the Department of Transportation, shall be consistent with the adopted regional

transportation plan, and shall be reviewed and commented on pursuant to subdivision (j) of Section 130301.

(c) Coordination and approval of all public mass transit service within the jurisdiction of the commission and between the jurisdiction of other commissions or transit operators.

(d) Determination or approval of the location and capacity of all capital development projects, including, but not limited to, exclusive public mass transit guideway systems, state highway projects, and federal-aid highway projects.

(e) Selection and specific approval of appropriate mass transit hardware and technology to be funded by the transportation improvement program.

(f) Determination and approval of the staging and scheduling of construction and other development relative to all transportation improvement projects to be funded by the transportation improvement program.

(g) Administration of the countywide program for the expenditure of funds allocated pursuant to Chapter 4 (commencing with Section 99200) of Part 11 of Division 10.

SEC. 21. Section 35251 of the Vehicle Code is amended to read:

35251. (a) A boom or mast which is designed to be raised and lowered by hydraulic mechanisms and which is a constituent part of or an attachment to a vehicle or machine, shall be securely chained or otherwise restrained to ensure compliance with Section 35250 while the vehicle or machine is being transported as a load or driven upon any highway.

(b) Subdivision (a) does not apply when the configuration and design of the hydraulic boom effectively restrain the movement of the boom during transit.

SEC. 22. Section 5201 of the Vehicle Code is amended to read:

5201. License plates shall at all times be securely fastened to the vehicle for which they are issued so as to prevent the plates from swinging and shall be mounted in a position to be clearly visible, and shall be maintained in a condition so as to be clearly legible. The rear license plate shall be mounted not less than 12 inches nor more than 60 inches from the ground, and the front license plate shall be mounted not more than 60 inches from the ground, except as follows:

(a) The rear license plate on a tow truck may be mounted on the left-hand side of the mast assembly at the rear of the cab of the vehicle, not less than 12 inches nor more than 90 inches from the ground.

(b) The rear license plate on a tank vehicle hauling hazardous waste, as defined in Section 25117 of the Health and Safety Code, or asphalt material may be mounted not less than 12 inches nor more than 90 inches from the ground.

(c) The rear license plate on a truck tractor may be mounted at the rear of the cab of the vehicle, not less than 12 inches nor more than 90 inches from the ground.

(d) The rear license plate of a vehicle designed by the

manufacturer for the collection and transportation of garbage, rubbish, or refuse and which is used regularly for the collection and transportation of such material by any person or governmental entity employed to collect, transport, and dispose of garbage, rubbish, or refuse may be mounted not less than 12 inches nor more than 90 inches from the ground.

(e) No covering shall be used on license plates. However, the installation of a cover over a lawfully parked vehicle to protect it from the weather and the elements does not constitute a violation of this subdivision. Any peace officer or other regularly salaried employee of a public agency designated to enforce laws, including local ordinances, relating to the parking of vehicles may temporarily remove so much of such a cover as is necessary to inspect any license plate, tab, or indicia of registration on a vehicle.

(f) No casing, shield, frame, border, or other device that obstructs or impairs the reading or recognition of a license plate by a remote emission sensing device, as specified in Sections 44081 and 44081.6 of the Health and Safety Code, shall be installed on, or affixed to, a vehicle.

SEC. 23. Section 40611 of the Vehicle Code is amended to read:

40611. Upon proof of correction of an alleged violation of Section 12500 or 12951, or any violation cited pursuant to Section 40610, the clerk shall collect a ten dollar ($10) transaction fee for each case. The fee shall be deposited by the clerk in accordance with Section 68084 of the Government Code, and allocated monthly as follows:

(a) Thirty-three percent shall be transferred to the local governmental entity in whose jurisdiction the citation was issued for deposit in the general fund of the entity.

(b) Thirty-four percent shall be transferred to the State Treasury for deposit in the State Penalty Fund established by Section 1464 of the Penal Code.

(c) Thirty-three percent shall be deposited in the county general fund.

(d) No fee shall be imposed pursuant to this section if the violation notice is processed only by the issuing agency and no record of the action is transmitted to the court.

SEC. 24. Section 3.5 of this bill incorporates amendments to Section 66503 of the Government Code proposed by both this bill and AB 2900. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 66503 of the Government Code, and (3) this bill is enacted after AB 2900, in which case Section 3 of this bill shall not become operative.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claim Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 705

An act to amend Sections 24353, 27001, 27002, 27002.1, 27003, 27011, 27012, 53601, and 53682 of, to add Section 27080.1 to, and to repeal Section 27004 of, the Government Code, and to amend Sections 75.51, 75.52, 1640, 1640.1, 2191.3, 2512, 2611.1, 2611.6, 2619, 2705.5, 2763, 2768, 2922, 3362, 3437, 3698.5, 3706.1, 3793, 4103, 4986.8, 5150.5, and 5832 of, to amend and renumber Sections 3708.1 and 3708.5 of, to add Section 3793.1 to, and to repeal Sections 2923, 2924, 2925, 2926, and 5150 of, the Revenue and Taxation Code, relating to local government finance.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 24353 of the Government Code is amended to read:

24353. Each officer of a county or judicial district authorized to collect money shall pay into the county treasury all money collected by him or her, or under his or her control, that is payable into the treasury in the form and at the time the county auditor and treasurer require. No officer who collects money as described in this section shall be required to accept payment in coin. If the county auditor finds that an officer of the county has failed to comply with the requirements for payment of moneys pursuant to this section or Section 68101, which directly results in the assessment of a financial penalty pursuant to Section 68085, the county department that failed to comply shall reimburse the judicial district in an amount equal to the actual penalty. With the approval of the treasurer as provided in Section 27080.1, each depositing officer may deposit directly into the treasurer's active account all money payable into the county treasury.

SEC. 2. Section 27001 of the Government Code is amended to

read:

27001. The treasurer shall file and keep the certificates of the auditor delivered to him or her when money is paid into the treasury. Notwithstanding Sections 26201, 26202, and 26205, the treasurer may destroy any certificate pursuant to this section if that certificate has been filed for more than one year and all of the following conditions are complied with:

(a) The record, paper, or document is photographed, microphotographed, or reproduced on film of a type approved for permanent photographic records by the National Bureau of Standards.

(b) The device used to reproduce the record, paper, or document on film is one that accurately reproduces the original thereof in all details.

(c) The photographs, microphotographs, or other reproductions on film are placed in conveniently accessible files and provision is made for preserving, examining, and using the same.

SEC. 3. Section 27002 of the Government Code is amended to read:

27002. The treasurer shall keep an account of the receipt and expenditure of all money received or paid out by him or her in books provided for the purpose. He or she shall enter in the books the amount, the time, from whom, and on what account all money was received by him or her, and the warrant number, the amount, time, and on what account all disbursements were made by him or her.

SEC. 4. Section 27002.1 of the Government Code is amended to read:

27002.1. (a) The treasurer may, in lieu of entering in books an account of the receipt and expenditure of all money received or paid out by him or her as provided in Section 27002, photograph, microphotograph, photocopy, or enter into an electronic data processing system that utilizes optical transmission and filing, all receipts for money received by him or her and all warrants paid out by him or her.

(b) Every reproduction described in subdivision (a) shall be deemed and considered an original, and a transcript, exemplification, or certified copy of any of those reproductions shall be deemed and considered a transcript, exemplification, or certified copy, as the case may be, of the original.

(c) All reproductions described in subdivision (a) shall be properly indexed and placed in convenient, accessible files. Each roll of microfilm shall be deemed and constitute a book, and shall be designated and numbered, and provision shall be made for preserving, examining, and using it.

A duplicate of each roll of microfilm shall be made and kept in a safe and separate place.

SEC. 5. Section 27003 of the Government Code is amended to read:

27003. The treasurer shall keep his or her books or any other

authorized form of record so that the amounts received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account.

SEC. 6. Section 27004 of the Government Code is repealed.

SEC. 7. Section 27011 of the Government Code is amended to read:

27011. Any county officer who knowingly accepts or allows any deposit in the county treasury of money from any private and unofficial source is guilty of a misdemeanor, punishable by imprisonment in the county jail for not less than six months nor more than one year, or by a fine of not less than five hundred dollars ($500) and not more than five thousand dollars ($5,000), or by both that fine and imprisonment, and shall forfeit his or her office.

SEC. 8. Section 27012 of the Government Code is amended to read:

27012. The Controller may summon county treasurers or the authorized representative of any county treasurer to meet with the Controller or his or her duly authorized representatives, in those groups and at that place or those places within the state as may be designated by the Controller for the purpose of discussing the interpretation, procedures, uniformity of operation, and efficient administration of the Revenue and Taxation Code and the Government Code. The actual and necessary expenses of any county officer or his or her authorized representative that are incurred while traveling to and from or while attending any meeting called pursuant to this section by the Controller shall be a charge against the county, to be paid in the same manner as other county charges are paid, provided that prior approval of the board of supervisors has been obtained.

SEC. 9. Section 27080.1 is added to the Government Code, to read:

27080.1. Where the county treasurer has entered into a contract for the deposit of moneys with a depository pursuant to Section 53682, the county treasurer may authorize any county officer or judicial district, required to deposit into the county treasury all money collected by him or her or the district, to deposit that money directly into the depository with whom the county treasurer has entered into the contract. All deposits made under authority granted by the treasurer pursuant to this section shall be made in the form as required by the treasurer, and receipts for those deposits shall be given in accordance with Section 27009.

SEC. 10. Section 53601 of the Government Code is amended to read:

53601. The legislative body of a local agency having money in a sinking fund of, or surplus money in, its treasury not required for the immediate necessities of the local agency may invest any portion of the money that it deems wise or expedient in those investments set forth below. However, where this section does not specify a

limitation on the term or remaining maturity at the time of the investment, no investment shall be made in any security, other than a security underlying a repurchase or reverse repurchase agreement authorized by this section, that at the time of the investment has a term remaining to maturity in excess of five years, unless the legislative body has granted express authority to make that investment either specifically or as a part of an investment program approved by the legislative body no less than three months prior to the investment:

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(e) Obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, the Tennessee Valley Authority, or in obligations, participations, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association; or in guaranteed portions of Small Business Administration notes; or in obligations, participations, or other instruments of, or issued by, a federal agency or a United States government-sponsored enterprise.

(f) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances. Purchases of bankers acceptances may not exceed 270 days maturity or 40 percent of the agency's surplus money that may be invested pursuant to this section. However, no more than 30 percent of the agency's surplus funds may be invested in the bankers acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing any surplus money in its treasury in any manner authorized by the Municipal Utility District Act, Division 6 (commencing with Section 11501) of the Public Utilities Code.

(g) Commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Eligible paper is further limited to issuing corporations that are

organized and operating within the United States and having total assets in excess of five hundred million dollars ($500,000,000) and having an "A" or higher rating for the issuer's debt, other than commercial paper, if any, as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Purchases of eligible commercial paper may not exceed 180 days maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. Purchases of commercial paper may not exceed 15 percent of the agency's surplus money that may be invested pursuant to this section. An additional 15 percent, or a total of 30 percent of the agency's surplus money, may be invested pursuant to this subdivision. The additional 15 percent may be so invested only if the dollar-weighted average maturity of the entire amount does not exceed 31 days. "Dollar-weighted average maturity" means the sum of the amount of each outstanding commercial paper investment multiplied by the number of days to maturity, divided by the total amount of outstanding commercial paper.

(h) Negotiable certificates of deposits issued by a nationally or state-chartered bank or a state or federal association (as defined by Section 5102 of the Financial Code) or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposits do not come within Article 2 (commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638.

(i) Investments in repurchase agreements or reverse repurchase agreements of any securities authorized by this section, as long as the proceeds of the reverse repurchase agreement are invested solely to supplement the income normally received from these securities. Investment in a reverse repurchase agreement shall be made only upon prior approval of the legislative body of the local agency. For purposes of this section, the term "repurchase agreement" means a purchase of securities by the local agency pursuant to an agreement by which the seller will repurchase the securities on or before a specified date and for a specified amount and will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery. The term "counterparty" for the purposes of this subdivision, means the other party to the transaction. A counterparty bank's trust department or safekeeping department may be used for physical delivery of the underlying security. The term of repurchase agreements shall be for one year or less. The term "securities," for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

The term "reverse repurchase agreement" means a sale of securities by the local agency pursuant to an agreement by which the

local agency will repurchase those securities on or before a specified date and for a specified amount.

(j) Medium-term notes of a maximum of five years maturity issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated in a rating category of "A" or its equivalent or better by a nationally recognized rating service. Purchases of medium-term notes may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section.

(k) Shares of beneficial interest issued by diversified management companies, as defined in Section 23701m of the Revenue and Taxation Code, investing in the securities and obligations as authorized by subdivisions (a) to (*l*), inclusive, of this section and which comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). To be eligible for investment pursuant to this subdivision, these companies shall either:

(1) Attain the highest ranking or the highest letter and numerical rating provided by not less than two of the three largest nationally recognized rating services.

(2) Retain an investment adviser registered with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations as authorized by subdivisions (a) to (m), inclusive, and with assets under management in excess of five hundred million dollars ($500,000,000).

The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that these companies may charge and shall not exceed 15 percent of the agency's surplus money that may be invested pursuant to this section.

(*l*) Notwithstanding anything to the contrary contained in this section, Section 53635, or any other provision of law, moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or other agreement of a local agency, or certificates of participation in those bonds, indebtedness, or lease installment sale, or other agreements, may be invested in accordance with the statutory provisions governing the issuance of those bonds, indebtedness, or lease installment sale, or other agreement, or to the extent not inconsistent therewith or if there are no specific statutory provisions, in accordance with the ordinance, resolution, indenture, or agreement of the local agency providing for the issuance.

(m) Notes, bonds, or other obligations that are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed

by delivery or book entry into the custody of a trust company or the trust department of a bank which is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

(n) Any mortgage pass-through security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable pass-through certificate, or consumer receivable-backed bond of a maximum of five years maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an "A" or higher rating for the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of "AA" or its equivalent or better by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section.

SEC. 11. Section 53682 of the Government Code is amended to read:

53682. Notwithstanding any other provision in this article except Section 53652, the treasurer may deposit moneys in and enter into contracts with any depository, as defined in subdivision (c) of Section 53630, for services to be rendered by that depository that in the treasurer's judgment are to the public advantage. One copy of each contract entered into under this section shall be filed with the auditor or corresponding officer of the local agency. The contract shall:

(a) Fix the duration of compensating deposits, if any.

(b) Fix the interest rate of that compensating deposit, if any.

(c) Specify the services to be rendered by the depository.

(d) Indicate whether the depository shall bear the expenses of transportation of the money to and from the depository.

(e) Fix the consideration payable by the agency for such services.

(f) Specify who may deposit moneys into the treasurer's active account and how those persons are to make those deposits.

SEC. 12. Section 75.51 of the Revenue and Taxation Code is amended to read:

75.51. The tax collector shall mail a supplemental tax bill to the assessee, including the following information either on the bill or in a separate statement accompanying the bill:

(a) The information supplied by the assessor to the auditor pursuant to Section 75.40.

(b) The amount of the supplemental taxes due.

(c) The date the notice is mailed.

(d) The date on which the taxes will become delinquent and the penalties for delinquency.

(e) A statement that the supplemental taxes were determined in accordance with Article XIII A of the California Constitution which

generally requires reappraisal of property whenever a change in ownership occurs or property is newly constructed.

(f) The tax rates or the dollar amounts of taxes levied by each revenue district and taxing agency on the property covered by the tax bill.

(g) Information specifying all of the following:

(1) That if the taxpayer disagrees with a change in the assessed value as shown on the tax bill, the taxpayer has the right to an informal assessment review for the following year by contacting the assessor's office by March 1.

(2) That if the taxpayer and the assessor are unable to agree on proper assessed value pursuant to an informal assessment review, the taxpayer has the right to file an application for reduction in assessment for the following year with the county board of equalization or the assessment appeals board, as applicable, during the period from July 2 to September 15, inclusive.

(3) The address of the clerk of the county board of equalization or the assessment appeals board, as applicable, at which forms for an application for reduction may be obtained.

SEC. 13. Section 75.52 of the Revenue and Taxation Code is amended to read:

75.52. (a) Taxes on the supplemental bill are due on the date mailed and shall become delinquent as follows:

(1) If the bill is mailed within the months of July through October, the first installment shall become delinquent at 5 p.m. on December 10 of the same year. The second installment shall become delinquent at 5 p.m. on April 10 of the next year.

(2) If the bill is mailed within the months of November through June, the first installment shall become delinquent at 5 p.m. on the last day of the month following the month in which the bill is mailed. The second installment shall become delinquent at 5 p.m. on the last day of the fourth calendar month following the date the first installment is delinquent.

(b) If the taxes due are not paid on or before the date and time they become delinquent, a penalty of 10 percent shall attach to them.

(c) The cost enumerated in Section 2621 shall be collected after the second installment is delinquent.

(d) If a delinquent date specified in subdivision (a) falls on a Saturday, Sunday, or legal holiday, the time of delinquency is at 5 p.m. or at the close of business, whichever is later, on the next following business day. If the board of supervisors, by adoption of an ordinance or resolution, closes the county's offices for business prior to the time of delinquency on the "next business day" or for that whole day, that day shall be considered a legal holiday for purposes of this section.

SEC. 14. Section 1640 of the Revenue and Taxation Code is amended to read:

1640. The clerk shall transmit in writing at the conclusion of the hearing or by mail to the protesting party or his or her agent and shall

transmit to the county board of equalization or assessment appeals board the hearing officer's report and recommendation on the assessment protest. The protesting party shall be informed that the county board of equalization is bound by the recommendation of the assessment hearing officer.

SEC. 15. Section 1640.1 of the Revenue and Taxation Code is amended to read:

1640.1. (a) The clerk shall transmit in writing at the conclusion of the hearing or by mail to the protesting party or his or her agent and shall transmit to the county board of equalization or assessment appeals board, the hearing officer's report and recommendation on the assessment protest. The protesting party shall be informed that the county board of equalization or the assessment appeals board is not bound by the recommendation of the assessment hearing officer and that he or she or the assessor is entitled to a full hearing before the county board or the assessment appeals board.

(b) The provision of this section shall supersede the provisions of Section 1640 in those counties in which the board of supervisors by resolution adopts the provisions of this section.

SEC. 16. Section 2191.3 of the Revenue and Taxation Code is amended to read:

2191.3. (a) The tax collector may make the filing specified in subdivision (b) where either of the following occurs:

(1) There is a tax on any of the following:

(A) A possessory interest secured only by a lien on that taxed possessory interest.

(B) Goods in transit, not secured by any lien on real property.

(C) Improvements that have been assessed pursuant to Section 2188.2.

(D) Off-roll taxes on escape assessments where the error was not the fault of the assessee and the escape taxes are being paid pursuant to Section 4837.5.

(E) Unsecured property not secured by a lien on any real property, and where the tax has become delinquent or where there are prior unpaid and delinquent taxes with respect to that same property.

(2) A tax has been entered on the unsecured roll pursuant to Section 482, 531.2, or 4836.5, or transferred to the unsecured roll pursuant to any provision of law.

(b) A filing for record without fee in the office of the county recorder of any county of a certificate specifying the amount due, the name, federal social security number, if known, and last known address of the assessee liable for the amount, and compliance with all provisions of this division with respect to the computation and levy of the tax if compliance has in fact occurred. The procedure authorized by this section is cumulative to the procedure provided by Sections 2951 and 3003. The county recorder shall, within 30 days after a filing as described in this subdivision with respect to delinquent taxes on unsecured property, send a notice of the filing

to the assessee at the assessee's last known address. The notice shall contain the information contained in the filing, and shall prominently display on its face the following heading:

"THIS IS TO NOTIFY YOU THAT A TAX LIEN HAS BEEN FILED WITH RESPECT TO UNSECURED PROPERTY"

SEC. 17. Section 2512 of the Revenue and Taxation Code is amended to read:

2512. If a remittance to cover a payment required by law to be made to a taxing agency prior to a specified date and hour is deposited in the United States mail in a sealed envelope, properly addressed with the required postage prepaid, the remittance shall be deemed received on the date shown by the post office cancellation mark stamped upon the envelope containing the remittance or on the date it was mailed if proof satisfactory to the tax collector establishes that the mailing occurred on an earlier date. The taxing agency is not required to accept such a payment actually received in the mail if it is received more than 30 days after the date and time set by law for the payment. This section shall not, for purposes of applying subdivision (a) of Section 3707, apply to a remittance sent by mail for the redemption of tax-defaulted property.

SEC. 18. Section 2611.1 of the Revenue and Taxation Code is amended to read:

2611.1. Any county department, officer, or employee charged by law with the collection of any county tax assessment, penalty or cost, license fees or money owing the county for any reason, that is due and payable, may file a verified application with the board for a discharge from accountability for the collection of the tax assessment, penalty or cost, license fees or money owing the county for any reason if the amount is so small as not to justify the cost of collection. The board of supervisors may adopt, with the approval of a majority of its entire membership, a resolution that authorizes and designates the county auditor as the officer to exercise the authority of the board under this section. No discharge from accountability obtained pursuant to this section shall be construed to release any person other than the person who obtained that discharge from an obligation to pay amounts that are due and owing.

SEC. 19. Section 2611.6 of the Revenue and Taxation Code is amended to read:

2611.6. The following information shall be included in each county tax bill or in a separate statement accompanying the bill:

(a) The full value of locally assessed property, including assessments made for irrigation district purposes in accordance with Section 26625.1 of the Water Code.

(b) The tax rate required by Article XIII A of the California Constitution.

(c) The rate or dollar amount of taxes levied in excess of the 1-percent limitation to pay for voter-approved indebtedness

incurred before July 1, 1978, or bonded indebtedness for the acquisition or improvement of real property approved by two-thirds of the voters on or after June 4, 1986.

(d) The amount of any special taxes and special assessments levied.

(e) The amount of any tax rate reduction pursuant to Section 100 of this code, with the notation: "Tax reduction by (name of jurisdiction)."

(f) The amount of any exemptions. Exemptions reimbursable by the state shall be separately shown.

(g) The total taxes due on the property covered by the bill.

(h) Instructions on tendering payment, including the name and mailing address of the tax collector.

SEC. 20. Section 2619 of the Revenue and Taxation Code is amended to read:

2619. If December 10 or April 10 falls on Saturday, Sunday or a legal holiday, the time of delinquency is at 5 p.m., or the close of business, whichever is later, on the next business day. If the board of supervisors, by adoption of an ordinance or resolution, closes the county's offices for business prior to the time of delinquency on the "next business day" or for that whole day, that day shall be considered a legal holiday for purposes of this section.

SEC. 21. Section 2705.5 of the Revenue and Taxation Code is amended to read:

2705.5. If December 10 or April 10 falls on Saturday, Sunday or a legal holiday, the time of delinquency is at 5 p.m., or the close of business, whichever is later, on the next business day. If the board of supervisors, by adoption of an ordinance or resolution, closes the county's offices for business prior to the time of delinquency on the "next business day" or for that whole day, that day shall be considered a legal holiday for purposes of this section.

SEC. 22. Section 2763 of the Revenue and Taxation Code is amended to read:

2763. If October 10, January 10, March 10 or May 10 falls on a Saturday, Sunday or legal holiday, the time of delinquency is at 5 p.m., or the close of business, whichever is later, on the next business day. If the board of supervisors, by adoption of an ordinance or resolution, closes the county's offices for business prior to the time of delinquency on the "next business day" or for that whole day, that day shall be considered a legal holiday for purposes of this section.

SEC. 23. Section 2768 of the Revenue and Taxation Code is amended to read:

2768. Notwithstanding the provisions of Sections 2756, 2759, and 2763, the board of supervisors of any county which has adopted a resolution pursuant to this chapter may by resolution provide that taxes on the secured roll are due and payable October 1, and the first installment shall be delinquent at the close of business on October 25. Thereafter, a delinquent penalty of 10 percent attaches to the installment. If October 25 falls on a Saturday, Sunday, or legal

holiday, the time of delinquency is at 5 p.m., or the close of business, whichever is later, on the next business day. If the board of supervisors, by adoption of an ordinance or resolution, closes the county's offfices for business prior to the time of delinquency on the "next business day" or for that whole day, that day shall be considered a legal holiday for purposes of this section.

A resolution adopted pursuant to this section shall provide that the auditor shall have to and including October 1 in which to deliver the secured roll to the tax collector as required by Section 2754.

SEC. 24. Section 2922 of the Revenue and Taxation Code is amended to read:

2922. (a) Taxes on the unsecured roll as of July 31, if unpaid, are delinquent at 5 p.m., or the close of business, whichever is later, on August 31 and thereafter subject to a delinquent penalty of 10 percent.

(b) Taxes added to the unsecured roll after July 31, if unpaid are delinquent and subject to a penalty of 10 percent at 5 p.m., or the close of business, whichever is later, on the last day of the month succeeding the month of enrollment.

(c) Taxes transferred to the unsecured roll pursuant to any provision of law and already subject to penalties also transferred, shall be subject only to the additional penalties and costs prescribed in subdivisions (d) and (e), which shall attach beginning July 1 and on the first day of each month thereafter.

(d) Unsecured taxes remaining unpaid at 5 p.m., or the close of business, whichever is later, on the last day of the second month after the 10-percent penalty attaches shall be subject to an additional penalty of 1½ percent attaching on the first day of each succeeding month on the amount of the original tax. The additional penalties shall continue to attach until the time of payment or until the time a court judgment is entered for the amount of unpaid taxes and penalties, whichever occurs first.

(e) In addition to the penalties imposed by this section, the tax collector may collect actual costs of collection incurred by the county up to the time the delinquency is paid.

(f) When the last day of a month falls on Saturday, Sunday, or a legal holiday, any penalty to which the tax becomes subject on that date shall not attach if the tax collector receives payment in full by 5 p.m., or the close of business, whichever is later, on the next business day. If the board of supervisors, by adoption of an ordinance or resolution, closes the county's offices for business prior to the time of delinquency on the "next business day" or for that whole day, that day shall be considered a legal holiday for purposes of this section.

SEC. 25. Section 2923 of the Revenue and Taxation Code is repealed.

SEC. 26. Section 2924 of the Revenue and Taxation Code is repealed.

SEC. 27. Section 2925 of the Revenue and Taxation Code is repealed.

SEC. 28. Section 2926 of the Revenue and Taxation Code is repealed.

SEC. 29. Section 3362 of the Revenue and Taxation Code is amended to read:

3362. The published notice shall show:

(a) The date of the notice.

(b) That on July 1, five years or more will have elapsed since the property became tax defaulted.

(c) That, unless sooner redeemed or an installment plan of redemption is initiated, the property will be sold.

(d) That the power to sell for nonpayment of taxes arises if the property remains tax defaulted at 12:01 a.m. on July 1.

(e) That if the property is sold for nonpayment of taxes the right of redemption will terminate.

(f) The official who will furnish all information concerning redemption.

(g) The fiscal year for which the defaulted taxes were levied.

(h) A description of the property. The assessments contained in this notice shall be numbered in ascending numerical order.

(i) The amount of taxes originally declared in default opposite the description of the property.

(j) The name of the assessee on the current roll.

(k) The street address of the property, if any, shown on the county assessment records.

SEC. 30. Section 3437 of the Revenue and Taxation Code is amended to read:

3437. The amount due on any property may be paid until the close of business on June 30 if it was separately valued on the secured roll. If June 30 falls on a Saturday, Sunday, or legal holiday, and payment is received by the close of business on the next business day, redemption penalties shall not attach. If the board of supervisors, by adoption of an ordinance or resolution, closes the county's offices for business prior to the time of delinquency on the "next business day" or for that whole day, that day shall be considered a legal holiday for purposes of this section.

SEC. 31. Section 3698.5 of the Revenue and Taxation Code is amended to read:

3698.5. (a) The minimum price at which property may be offered for sale pursuant to this chapter shall be an amount not less than the total amount necessary to redeem, plus costs. For purposes of this subdivision:

(1) The "total amount necessary to redeem" is the sum of the following:

(A) The amount of defaulted taxes.

(B) Delinquent penalties and costs.

(C) Redemption penalties.

(D) A redemption fee.

(2) "Costs" are those amounts described in subdivisions (a) and (b) of Section 4112, Sections 4672, 4672.1, 4672.2, 4673, and subdivision

(b) of Section 4673.1.

(b) This section shall not apply to property or interests that qualify for sale in accordance with the provisions of subdivisions (b) and (c) of Section 3692.

(c) Where property or property interests have been offered for sale at least once and no acceptable bids therefor have been received, the tax collector may, in his or her discretion and with the approval of the board of supervisors, offer that property or those interests at the next scheduled sale at a minimum price that the tax collector deems appropriate.

SEC. 32. Section 3706.1 of the Revenue and Taxation Code is amended to read:

3706.1. The tax collector shall have authority to postpone the public auction sale or any portion thereof under the following conditions:

(a) Notice of any postponement of the sale shall be made by the tax collector who, by public declaration at the time and place originally fixed for the sale, may postpone the sale to a new time, date, and place. No other notice of the postponed sale need be given if the date for the new time, date, and place is within seven days of the time originally fixed for the sale.

(b) Notice of any postponed sale that is to be held not less than eight days nor more than 60 days from the time originally fixed for the sale, shall be made pursuant to the same provisions that were followed in providing notice of the original sale to parties of interest, as defined in Section 4675.

SEC. 33. Section 3708.1 of the Revenue and Taxation Code is amended and renumbered to read:

3708.5. If a deed to the purchaser contains a clerical error or misstatement of fact, a corrected deed may be issued by the tax collector and recorded with the county recorder without charge. The new deed shall contain a statement of reasons for its issuance and, as far as practical, shall be the same as the original except where corrected.

SEC. 34. Section 3708.5 of the Revenue and Taxation Code is amended and renumbered to read:

3708.1. Upon execution the tax collector shall immediately record the deed with the county recorder and pay the recording fees. Recording of the deed shall constitute delivery thereof to the grantee named in the deed.

SEC. 35. Section 3793 of the Revenue and Taxation Code is amended to read:

3793. Any agreement under this article may:

(a) Cover any tax-defaulted property without regard to the boundaries of the parcels which were assessed.

(b) Provide for sale of various portions of the property at various prices and on various terms and for an option to purchase any remaining portion.

SEC. 36. Section 3793.1 is added to the Revenue and Taxation

Code, to read:

3793.1. The sales price of any property sold under this article shall include, at a minimum, the amounts of all of the following:

(a) All defaulted taxes and assessments, and all associated penalties and costs.

(b) Redemption penalties and fees incurred through the month of the sale.

(c) All costs of the sale.

SEC. 37. Section 4103 of the Revenue and Taxation Code is amended to read:

4103. Redemption penalties are the sum of the following:

(a) Beginning July 1st of the year of the declaration of tax default, on the declared amount of defaulted taxes at the rate of 1½ percent a month to the time of redemption. If the last day of any month falls on a Saturday, Sunday, or legal holiday, the additional penalty of 1½ percent shall attach after the close of business on the next business day.

(b) Beginning July 1st of each subsequent year, on the unpaid taxes for which the property would have been declared in default if there had not been a previous declaration, 1½ percent a month to the time of redemption. If the last day of any month falls on Saturday, Sunday, or a legal holiday, the additional penalty of 1½ percent shall attach after 5 p.m. on the next business day. If the board of supervisors, by adoption of an ordinance or resolution, closes the county's offices for business prior to the time of delinquency on the "next business day" or for that whole day, that day shall be considered a legal holiday for purposes of this section.

SEC. 38. Section 4986.8 of the Revenue and Taxation Code is amended to read:

4986.8. (a) On recommendation of the tax collector, the auditor may cancel any tax assessment, special district tax, or special assessment if the amount is so small as not to justify the cost of collection.

(b) The total amount which may be canceled pursuant to this section shall not exceed twenty dollars ($20) per bill.

(c) Any penalties, costs, or fees that are the result of nonpayment of any tax which is canceled pursuant to this section may also be canceled.

SEC. 39. Section 5150 of the Revenue and Taxation Code is repealed.

SEC. 40. Section 5150.5 of the Revenue and Taxation Code is amended to read:

5150.5. In any action in which the recovery of a penalty assessed pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 830 is allowed by the court, the plaintiff shall be entitled to interest on the penalties for which recovery is allowed, at the applicable rate or rates in effect from time to time and payable on a refund of tax as provided in Section 5151. This interest shall be payable from the date of filing of the claim for refund, but in no event earlier than the

date of payment of the penalty or installments thereof sought to be refunded, to the date of entry of judgment. This accrued interest shall be included in the judgment.

SEC. 41. Section 5832 of the Revenue and Taxation Code is amended to read:

5832. (a) (1) Upon application, the county tax collector shall issue a tax clearance certificate or a conditional tax clearance certificate.

(2) Any tax clearance certificate issued shall be used to permit registration of used manufactured homes and for any other purposes that may be prescribed by the Controller. The certificate may indicate that the county tax collector finds that no local property tax is due or is likely to become due, or that any applicable local property taxes have been paid or are to be paid in a manner not requiring the withholding of registration or the transfer of registration.

(3) Any conditional tax clearance certificate issued shall indicate that the county tax collector finds that a tax liability exists, the amount due, and the final date that amount may be paid before a further tax liability is incurred. The certificate shall be in any form that the Controller may prescribe, and shall be executed, issued, and accepted for clearance of registration or permit issuance on the conditions which the Controller may prescribe.

(b) Within five working days of receipt of the written demand for a conditional tax clearance certificate or tax clearance certificate, the county tax collector shall forward the conditional tax clearance certificate or tax clearance certificate, showing no tax liability exists, to the requesting escrow officer. In the event the final due date of the tax clearance certificate or conditional tax clearance certificate expires within 30 days of the date of its issuance, an additional conditional tax clearance certificate or tax clearance certificate shall be completed, which has a final due date of at least 30 days beyond the date of issuance. The tax collector shall not charge a fee for the issuance of a certificate unless a previously issued tax clearance certificate or conditional tax clearance certificate expires prior to the date upon which title transfers. The fee for the issuance of a subsequent certificate with respect to that manufactured home shall be an amount equal to the actual costs of preparing and processing that certificate.

(c) If the tax collector fails to comply with the demand within 30 days from the date the demand is mailed, the escrow officer may close the escrow in accordance with the provisions of subdivision (m) of Section 18035 of the Health and Safety Code.

(d) Notwithstanding any provisions of law requiring the tax collector to issue a tax clearance certificate or conditional tax clearance certificate within a specified period of time, when an escrow information demand is made pursuant to Section 18035 of the Health and Safety Code for a manufactured home that has not been enrolled in the county, the tax collector shall be afforded the number of working days necessary for the assessor to determine the value of

the manufactured home and for the auditor to extend tax liability.

(e) The issuance, alteration, forgery, or use of any tax clearance certificate or conditional certificate in a manner contrary to the requirements of the Controller constitutes a misdemeanor.

SEC. 42. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 706

An act to amend Section 2966 of the Penal Code, relating to prisoners.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 2966 of the Penal Code is amended to read:

2966. (a) A prisoner may request a hearing before the Board of Prison Terms, and the board shall conduct a hearing if so requested, for the purpose of proving that the prisoner meets the criteria in Section 2962. At the hearing, the burden of proof shall be on the person or agency who certified the prisoner under subdivision (d) of Section 2962. If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two independent professionals as provided for in Section 2978. The prisoner shall be informed at the hearing of his or her right to request a trial pursuant to subdivision (b). The Board of Prison Terms shall provide a prisoner who requests a trial, a petition form and instructions for filing the petition.

(b) A prisoner who disagrees with the determination of the Board of Prison Terms that he or she meets the criteria of Section 2962, may file in the superior court of the county in which he or she is incarcerated or is being treated a petition for a hearing on whether he or she, as of the date of the Board of Prison Terms hearing, met the criteria of Section 2962. The court shall conduct a hearing on the petition within 60 calendar days after the petition is filed, unless either time is waived by the petitioner or his or her counsel, or good cause is shown. Evidence offered for the purpose of proving the prisoner's behavior or mental status subsequent to the Board of

Prison Terms hearing shall not be considered. The order of the Board of Prison Terms shall be in effect until the completion of the court proceedings. The court shall advise the petitioner of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the petitioner shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing; however, in order to reduce costs, the rules of criminal discovery, as well as civil discovery, shall be applicable. The standard of proof shall be beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney. The court may, upon stipulation of both parties, receive in evidence the affidavit or declaration of any psychiatrist, psychologist, or other professional person who was involved in the certification and hearing process, or any professional person involved in the evaluation or treatment of the petitioner during the certification process. The court may allow the affidavit or declaration to be read and the contents thereof considered in the rendering of a decision or verdict in any proceeding held pursuant to subdivision (b) or (c), or subdivision (a) of Section 2972. If the court or jury reverses the determination of the Board of Prison Terms, the court shall stay the execution of the decision for five working days to allow for an orderly release of the prisoner.

(c) If the Board of Prison Terms continues a parolee's mental health treatment under Section 2962 when it continues the parolee's parole under Section 3001, the procedures of this section shall only be applicable for the purpose of determining if the parolee has a severe mental disorder, whether the parolee's severe mental disorder is not in remission or cannot be kept in remission without treatment, and whether by reason of his or her severe mental disorder, the parolee represents a substantial danger of physical harm to others.

CHAPTER 707

An act relating to forest resources, and making an appropriation for the usual and current expenses of the state, to take effect immediately.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. (a) The sum of seven million dollars ($7,000,000) is hereby appropriated from the General Fund to the Department of Forestry and Fire Protection, for expenditure in the 1993–94 fiscal year, in augmentation of, and for the purposes of, emergency fire

suppression and detection costs, as provided in Item 3540-006-001 of the Budget Act of 1993.

(b) The Director of Finance may withhold authorization for the expenditure of funds provided in this section until such time as, and to the extent that, preliminary estimates of potential deficiencies are verified.

SEC. 2. Notwithstanding any other provision of law, the Director of Finance may authorize the temporary redirection of funds from Item 3540-006-001 of the Budget Act of 1994 (Chapter 139 of the Statutes of 1994), for the purpose of maintaining adequate and necessary fire fighting personnel and aerial fire fighting resources through the 1994 fire season.

SEC. 3. Sections 1 and 2 of this act make appropriations for the usual current expenses of the state within the meaning of paragraph (3) of subdivision (c) of Section 8 of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 708

An act to add Chapter 1.155 (commencing with Section 199.65) to Part 1 of Division 1 of the Health and Safety Code, relating to AIDS.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Chapter 1.155 (commencing with Section 199.65) is added to Part 1 of Division 1 of the Health and Safety Code, to read:

CHAPTER 1.155. AIDS EXPOSURE NOTIFICATION

199.65. (a) The Legislature finds and declares all of the following:

(1) Early knowledge of HIV infection is important in order to permit exposed persons to make informed health care decisions as well as to take measures to reduce the likelihood of transmitting the infection to others.

(2) Individual health care providers, agents and employees of health care facilities and individual health care providers, and first responders, including police, firefighters, rescue personnel, and other persons who provide the first response to emergencies, frequently come into contact with the blood and other potentially infectious materials of individuals whose HIV infection status is not known.

(3) Even if these exposed individuals use universal infection control precautions to prevent HIV transmission, there will be occasions when they experience significant exposure to the blood or

other potentially infectious materials of patients.

(b) Therefore, it is the intent of the Legislature to provide a narrow exposure notification and information mechanism to permit individual health care providers, the employees or contracted agents of health care facilities and individual health care providers, and first responders, who have experienced a significant exposure to the blood or other potentially infectious materials of a patient, to learn of the HIV infection status of the patient.

199.66. (a) "Attending physician of the source patient" means any physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code and any person licensed pursuant to the Osteopathic Initiative Act, who provides health care services to the source patient. Notwithstanding any other provision of this subdivision to the contrary, the attending physician of the source patient shall include any of the following persons:

(1) The private physician of the source patient.

(2) The physician primarily responsible for the patient who is undergoing inpatient treatment in a hospital.

(3) A registered nurse or licensed nurse practitioner who has been designated by the attending physician of the source patient.

(b) "Available blood or patient sample" means blood or other tissue or material that was legally obtained in the course of providing health care services, and is in the possession of the physician or other health care provider of the source patient prior to the exposure incident.

(c) "Certifying physician" means any physician consulted by the exposed individual for the exposure incident. A certifying physician shall have demonstrated competency and understanding of the then applicable guidelines or standards of the Division of Occupational Safety and Health.

(d) "Exposed individual" means any individual health care provider, first responder, or any other person, including, but not limited to, any employee, volunteer, or contracted agent of any health care provider, who is exposed, within the scope of his or her employment, to the blood or other potentially infectious materials of a source patient.

(e) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act, any person certified pursuant to Division 2.5 (commencing with Section 1797), any clinic, health dispensary, or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200), any employee, volunteer, or contracted agent of any group practice prepayment health care service plan regulated pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2), and any professional student of one of the clinics, health dispensaries, or

health care facilities or health care providers described in this subdivision.

(f) "First responder" means police, firefighters, rescue personnel, and any other person who provides emergency response, first aid care, or other medically related assistance either in the course of the person's occupational duties or as a volunteer.

(g) "Other potentially infectious materials" means those body fluids identified by the Division of Occupational Safety and Health as potentially capable of transmitting HIV.

(h) "Significant exposure" means direct contact with blood or other potentially infectious materials of a patient in a manner that, according to the then applicable guidelines of the Division of Occupational Safety and Health, is capable of transmitting HIV.

(i) "Source patient" means any person receiving health care services whose blood or other potentially infectious material has been the source of a significant exposure to an exposed individual.

199.67. Notwithstanding Chapter 1.11 (commencing with Section 199.20) or any other provision of law, the blood or other tissue or material of a source patient may be tested, and an exposed individual may be informed of the HIV status of the patient, if the exposed individual and the health care facility, if any, have substantially complied with the then applicable guidelines of the Division of Occupational Safety and Health and the State Department of Health Services and if the following procedure is followed:

(a) (1) Whenever an individual becomes an exposed individual by experiencing an exposure to the blood or other potentially infectious material of a patient during the course of rendering health care-related services or occupational services, the exposed individual may request an evaluation of the exposure by a physician to determine if it is a significant exposure as defined in subdivision (h) of Section 199.66. No physician or other exposed individual shall certify his or her own significant exposure. However, an employing physician may certify the exposure of one of his or her employees. Requests for certification shall be made in writing within 72 hours of the exposure.

(2) A written certification by a physician of the significance of the exposure shall be obtained within 72 hours of the request. The certification shall include the nature and extent of the exposure.

(b) (1) The exposed individual shall be counseled regarding the likelihood of transmission, the limitations of an HIV test, the need for followup testing, and the procedures that the exposed individual must follow regardless of the HIV status of the source patient. The exposed individual may be tested in accordance with the then applicable guidelines or standards of the Division of Occupational Safety and Health. The result of this test shall be confirmed as negative before available blood or other patient samples of the source patient may be tested for evidence of HIV infection without the consent of the source patient pursuant to subdivision (d).

(2) Within 72 hours of certifying the exposure as significant, the

certifying physician shall provide written certification to an attending physician of the source patient that a significant exposure to an exposed individual has occurred, and shall request information on the HIV status of the source patient and the availability of blood or other patient sample. An attending physician shall respond to the request for information within three working days.

(c) If the HIV status of the source patient is already known to be positive, then, except as provided in subdivisions (b) and (c) of Section 199.24 when the exposed individual is a health care provider or an employee or agent of the health care provider of the source patient, an attending physician and surgeon of the source patient shall attempt to obtain the consent of the source patient to disclose to the exposed individual the HIV status of the source patient. If the source patient cannot be contacted or refuses to consent to the disclosure, then the exposed individual may be informed of the HIV status of the source patient by an attending physician of the source patient as soon as possible after the exposure has been certified as significant, notwithstanding Section 199.21 or any other provision of law.

(d) If the HIV status of the source patient is unknown to the certifying physician or an attending physician, if blood or other patient samples are available, and if the exposed individual has tested negative on a baseline HIV test, the source patient shall be given the opportunity to give informed consent to an HIV test in accordance with the following:

(1) Within 72 hours after receiving a written certification of significant exposure, an attending physician of the source patient shall do all of the following:

(A) Make a good faith effort to notify the source patient or the authorized legal representative of the source patient about the significant exposure. A good faith effort to notify includes, but is not limited to, a documented attempt to locate the source patient by telephone or by first-class mail with certificate of mailing. An attempt to locate the source patient and the results of that attempt shall be documented in the medical record of the source patient. An inability to contact the source patient, or legal representative of the source patient, after a good faith effort to do so as provided in this subdivision, shall constitute a refusal of consent pursuant to paragraph (2).

(B) Attempt to obtain the voluntary informed consent of the source patient or the authorized legal representative of the source patient to perform an HIV test on the source patient or on any available blood or patient sample of the source patient. The voluntary informed consent shall be in writing. The source patient shall have the option not to be informed of the test result. An exposed individual shall be prohibited from attempting to obtain directly informed consent for HIV testing from the source patient. If a source patient is incapacitated and therefore is unable to provide informed consent and has no authorized legal representative, then HIV testing

on the source patient or available blood or tissue of the source patient shall not be permitted.

(C) Provide the source patient with medically appropriate pretest counseling and refer the source patient to appropriate posttest counseling and followup if necessary. The source patient shall be offered medically appropriate counseling whether or not he or she consents to testing.

(2) If the source patient or the authorized legal representative of the source patient refuses to consent to an HIV test after a documented effort has been made to obtain consent, then any available blood or patient sample of the source patient may be tested. The source patient or authorized legal representative of the source patient shall be informed that an available blood sample or other tissue or material will be tested despite his or her refusal, and that the exposed individual shall be informed of the HIV test results.

(3) A source patient or the authorized legal representative of a source patient shall be advised that he or she shall be informed of the results of the HIV test only if he or she wishes to be so informed. If a patient refuses to provide informed consent to HIV testing and refuses to learn the results of HIV testing, then he or she shall sign a form documenting this refusal. The source patient's refusal to sign this form shall be construed to be a refusal to be informed of the HIV test results. HIV test results shall only be placed in the medical record when the patient has agreed in writing to be informed of the results.

(4) Notwithstanding any other provision of law, if the source patient or authorized legal representative of a source patient refuses to be informed of the results of the test, then the HIV test results of that source patient shall only be provided to the exposed individual in accordance with the then applicable regulations established by the Division of Occupational Safety and Health.

(5) The source patient's identity shall be encoded on the HIV test result record.

(e) If an exposed individual is informed of the HIV status of a source patient pursuant to this section, the exposed individual shall be informed that he or she is subject to existing confidentiality protections for any identifying information about the HIV test results, and that HIV-related medical information of the source patient shall be kept confidential and may not be further disclosed, except as otherwise authorized by law. The exposed individual shall be informed of the penalties for which he or she would be personally liable for violation of Section 199.21.

(f) The costs for the HIV test and counseling of the exposed individual, or the source patient, or both shall be borne by the employer of the exposed individual, if any. An employer who directs and controls the exposed individual shall provide the postexposure evaluation and followup required by the California Division of Occupational Safety and Health as well as the testing and counseling for source patients required under this chapter. If an exposed

individual is a volunteer or a student, then the health care provider or first responder that assigned a task to the volunteer or student may pay for the costs of testing and counseling as if that volunteer or student were an employee. If an exposed individual, who is not an employee of a health facility or of another health care provider, chooses to obtain postexposure evaluation or followup counseling, or both, or treatment, then he or she shall be financially responsible for the costs thereof and shall be responsible for the costs of the testing and counseling for the source patient.

(g) Nothing in this section authorizes the disclosure of the source patient's identity.

(h) Nothing in this section shall authorize a health care provider to draw blood or other body fluids except as otherwise authorized by law.

(i) The provisions of this section are cumulative only and shall not preclude HIV testing of source patients as authorized by any other provision of law.

199.68. (a) No health care provider, as defined in this chapter, shall be subject to civil or criminal liability or professional disciplinary action for performing an HIV test on the available blood or patient sample of a source patient, or for disclosing the HIV status of a source patient to the source patient, an attending physician of the source patient, the certifying physician, the exposed individual, or any attending physician of the exposed individual, if the health care provider has acted in good faith in complying with this chapter.

(b) Any health care provider or first responder, or any exposed individual, who willfully performs or permits the performance of an HIV test on a source patient, that results in economic, bodily, or psychological harm to the source patient, without adhering to the procedure set forth in this chapter is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year, or a fine not to exceed ten thousand dollars ($10,000), or by both.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 709

An act to amend Sections 1797.112, 1797.171, 1797.172, and 1798.200 of, to add Sections 1797.194, 1798.201, 1798.203, and 1798.209 to, to repeal and add Section 1798.202 of, the Health and Safety Code, relating to emergency medical services.

[Approved by Governor September 20, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 1797.112 of the Health and Safety Code, as amended by Section 2 of Chapter 997 of the Statutes of 1993, is amended to read:

1797.112. (a) The Emergency Medical Services Personnel Fund is hereby created in the State Treasury, the funds in which are to be held in trust for the benefit of the authority's testing and personnel licensure program and for the purpose of making reimbursements to entities for the performance of functions for which fees are collected pursuant to Section 1797.172, for expenditure upon appropriation by the Legislature.

(b) The authority may transfer unused portions of the Emergency Medical Services Personnel Fund to the Surplus Money Investment Fund. Funds transferred to the Surplus Money Investment Fund shall be placed in a separate trust account, and shall be available for transfer to the Emergency Medical Services Personnel Fund, together with interest earned, when requested by the authority.

(c) The authority shall maintain a reserve balance in the Emergency Medical Services Personnel Fund equal to at least three months of the annual authorized expenditures for the personnel licensure program including, but not limited to, reimbursements to entities set forth in subdivision (a). Any increase in the fees deposited in the Emergency Medical Services Personnel Fund shall be effective upon a determination by the authority that additional moneys are required to fund expenditures of the personnel licensure program, including, but not limited to, reimbursements to entities set forth in subdivision (a).

SEC. 2. Section 1797.171 of the Health and Safety Code is amended to read:

1797.171. (a) The authority shall develop, and after approval of the commission pursuant to Section 1799.50, shall adopt, minimum standards for the training and scope of practice for EMT-II.

(b) An EMT-II shall complete a course of training on the nature of sudden infant death syndrome in accordance with subdivision (b) of Section 1797.170.

(c) In rural or remote areas of the state where patient transport times are particularly long and where local resources are inadequate to support an EMT-P program for EMS responses, the director may

approve additions to the scope of practice of EMT-IIs serving the local system, if requested by the medical director of the local EMS agency, and if the EMT-II has received training equivalent to that of an EMT-P. The approval of the director, in consultation with a committee of local EMS medical directors named by the Emergency Medical Directors Association of California, is required prior to implementation of any addition to a local optional scope of practice for EMT-IIs proposed by the medical director of a local EMS agency. No drug or procedure that is not part of the basic EMT-P scope of practice, including, but not limited to, any approved local options, shall be added to any EMT-II scope of practice pursuant to this subdivision.

Approval of additions to the scope of practices pursuant to this subdivision may be given only for EMT-II programs in effect on January 1, 1994.

SEC. 3. Section 1797.172 of the Health and Safety Code, as amended by Section 4 of Chapter 997 of the Statutes of 1993, is amended to read:

1797.172. (a) The authority shall develop, and after the approval of the commission pursuant to Section 1799.50, shall adopt, minimum standards for the training and scope of practice for EMT-P.

(b) The approval of the director, in consultation with a committee of local EMS medical directors named by the EMS Medical Directors Association of California, is required prior to implementation of any addition to a local optional scope of practice for EMT-Ps proposed by the medical director of a local EMS agency.

(c) Notwithstanding any other provision of law, the authority shall be the agency solely responsible for licensure and licensure renewal of EMT-Ps who meet the standards and are not precluded from licensure because of any of the reasons listed in subdivision (d) of Section 1798.200. Each application for licensure or licensure renewal shall include the applicant's social security number in order to establish the identity of the applicant and in order to determine whether the applicant has any criminal convictions in this state or any other jurisdiction, including foreign countries. The information obtained as a result of obtaining the applicant's social security number shall be used in accordance with Section 11105 of the Penal Code, and to determine whether the applicant is subject to denial of licensure or licensure renewal pursuant to this division.

(d) The authority shall charge fees for the licensure and licensure renewal of EMT-Ps in an amount sufficient to support the authority's licensure program at a level that ensures the qualifications of the individuals licensed to provide quality care. The basic fee for licensure or licensure renewal of an EMT-P shall not exceed one hundred twenty-five dollars ($125). Separate additional fees may be charged, at the option of the authority, for services that are not shared by all applicants for licensure and licensure renewal, including, but not limited to, any of the following services:

(1) Initial application for licensure as an EMT-P.

(2) Competency testing, the fee for which shall not exceed thirty dollars ($30), except that an additional fee may be charged for the cost of any services that provide enhanced availability of the exam for the convenience of the EMT-P, such as on-demand electronic testing.

(3) Fingerprint and criminal record check.

(4) Out-of-state training equivalency determination.

(5) Verification of continuing education for a lapse in licensure.

(6) Replacement of a lost licensure card. The fees charged for individual services shall be set so that the total fees charged to EMT-Ps shall not exceed the authority's actual total cost for the EMT-P licensure program.

(e) The authority may provide nonconfidential, nonpersonal information relating to EMS programs to interested persons upon request, and may establish and assess fees for the provision of this information. These fees shall not exceed the costs of providing the information.

(f) At the option of the authority, fees may be collected for the authority by an entity that contracts with the authority to provide any of the services associated with the EMT-P program. All fees collected for the authority in a calendar month by any entity designated by the authority pursuant to this section to collect fees for the authority shall be transmitted to the authority for deposit into the Emergency Medical Services Personnel Fund within 30 calendar days following the last day of the calendar month in which the fees were received by the designated entity, unless the contract between the entity and the authority specifies a different timeframe.

SEC. 4. Section 1797.194 is added to the Health and Safety Code, immediately following Section 1797.193, to read:

1797.194. The purpose of this section is to provide for the state licensure of EMT-P personnel. Notwithstanding any provision of law, including, but not limited to, Sections 1797.208 and 1797.214, all of the following applies to EMT-P personnel:

(a) Any reference to EMT-P certification pursuant to this division shall be equivalent to EMT-P licensure pursuant to this division, including, but not limited to, any provision in this division relating to the assessment of fees.

(b) The statewide examination designated by the authority for licensure of EMT-P personnel and the licensure issued by the authority shall be the single sufficient examination and licensure required for practice as an EMT-P.

(c) EMT-P licenses shall be renewed every two years upon submission to the authority of proof of satisfactory completion of continuing education or other educational requirements established by regulations of the authority, upon approval by the commission. If the evaluation and recommendations of the authority required pursuant to Section 8 of Chapter 997 of the Statutes of 1993, so concludes, the renewal of EMT-P licenses shall, in addition to continuing education requirements, be contingent upon

reexamination at 10-year intervals to ensure competency.

(d) Every EMT-P licensee may be disciplined by the authority for violations of this division. The proceedings under this subdivision shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the authority shall have all the powers granted therein for this purpose.

(e) Nothing in this section shall be construed to extend the scope of practice of an EMT-P beyond prehospital settings, as defined by regulations of the authority.

(f) Nothing in this section shall be construed to alter or interfere with the local EMS agency's ability to locally accredit licensed EMT-Ps.

(g) Nothing in this section shall be construed to hinder the ability of the medical director of the local EMS agency to maintain medical control within the local EMS system in accordance with this division, including, but not limited to, Chapter 5 (commencing with Section 1798).

SEC. 5. Section 1798.200 of the Health and Safety Code is amended to read:

1798.200. (a) The medical director of the local EMS agency may, in accordance with regulations adopted by the authority, deny, suspend, or revoke any EMT-I or EMT-II certificate issued under this division, or may place any EMT-I or EMT-I certificate holder on probation, upon the finding by that medical director of the occurrence of any of the actions listed in subdivision (c).

(b) The authority may deny, suspend, or revoke any EMT-P license issued under this division, or may place any EMT-P license issued under this division, or may place any EMT-P licenseholder on probation upon the finding by the director of the occurrence of any of the actions listed in subdivision (c).

(c) Any of the following actions shall be considered evidence of a threat to the public health and safety and may result in the denial, suspension, or revocation of a certificate or license issued under this division, or in the placement on probation of a certificate or licenseholder under this division:

(1) Fraud in the procurement of any certificate or license under this division.

(2) Gross negligence.

(3) Repeated negligent acts.

(4) Incompetence.

(5) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, and duties of prehospital personnel.

(6) Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or a certified copy of the record shall be conclusive evidence of such conviction.

(7) Violating or attempting to violate directly or indirectly, or

assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.

(8) Violating or attempting to violate any federal or state statute or regulation which regulates narcotics, dangerous drugs, or controlled substances.

(9) Addiction to the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

(10) Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.

(11) Demonstration of irrational behavior or occurrence of a physical disability to the extent that a reasonable and prudent person would have reasonable cause to believe that the ability to perform the duties normally expected may be impaired.

(b) This section shall be inoperative until January 1, 1995, and shall become operative on that date.

SEC. 6. Section 1798.201 is added to the Health and Safety Code, immediately following Section 1798.200, to read:

1798.201. (a) When information comes to the attention of the medical director of the local EMS agency that an EMT-P licenseholder has committed any act or omission that appears to constitute grounds for disciplinary action under this division, the medical director of the local EMS agency may evaluate the information to determine if there is reason to believe that disciplinary action may be necessary.

(b) If the medical director sends a recommendation to the authority for further investigation or discipline of the licenseholder, the recommendation shall include all documentary evidence collected by the medical director in evaluating whether or not to make that recommendation. The recommendation and accompanying evidence shall be deemed in the nature of an investigative communication and be protected by Section 6254 of the Government Code. In deciding what level of disciplinary action is appropriate in the case, the authority shall consult with the medical director of the local EMS agency.

SEC. 7. Section 1798.202 of the Health and Safety Code is repealed.

SEC. 8. Section 1798.202 is added to the Health and Safety Code, immediately following Section 1798.201, to read:

1798.202. (a) The director of the authority or the medical director of the local EMS agency, after consultation with the relevant employer, may temporarily suspend, prior to hearing, any EMT-P license upon a determination that: (1) the licensee has engaged in acts or omissions that constitute grounds for revocation of the EMT-P license; and (2) permitting the licensee to continue to engage in the licensed activity, or permitting the licensee to continue in the licensed activity without restriction, would present an imminent threat to the public health or safety. When the suspension is initiated

by the local EMS agency, subdivision (b) shall apply. When the suspension is initiated by the director of the authority, subdivision (c) shall apply.

(b) The local EMS agency shall notify the licensee that his or her EMT-P license is suspended and shall identify the reasons therefor. Within three working days of the initiation of the suspension by the local EMS agency, the agency shall transmit to the authority, via facsimile transmission or overnight mail, all documentary evidence collected by the local EMS agency relative to the decision to temporarily suspend. Within two working days of receipt of the local EMS agency's documentary evidence, the director of the authority shall determine the need for the licensure action. Part of that determination shall include an evaluation of the need for continuance of the suspension during the licensure action review process. If the director of the authority determines that the temporary suspension order should not continue, the authority shall immediately notify the licensee that the temporary suspension is lifted. If the director of the authority determines that the temporary suspension order should continue, the authority shall immediately notify the licensee of the decision to continue the temporary suspension and shall, within 15 calendar days of receipt of the EMS agency's documentary evidence, serve the licensee with a temporary suspension order and accusation pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The director of the authority shall initiate a temporary suspension with the filing of a temporary suspension order and accusation pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and shall notify the director of the local EMS agency, and the relevant employer.

(d) If the licensee files a notice of defense, the hearing shall be held within 30 days of the authority's receipt of the notice of defense. The temporary suspension order shall be deemed vacated if the authority fails to make a final determination on the merits within 15 days after the administrative law judge renders the proposed decision.

SEC. 9. Section 1798.209 is added to the Health and Safety Code, immediately following Section 1798.208, to read:

1798.209. The local EMS agency may place on probation, suspend, or revoke the approval under this division of any training program for failure to comply with this division or any rules or regulations adopted pursuant thereto.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the

provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 710

An act to add Section 51.9 to the Civil Code, relating to personal rights.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. The Legislature finds and declares that sexual harassment occurs not only in the workplace, but in relationships between providers of professional services and their clients.

SEC. 2. Section 51.9 is added to the Civil Code, to read:

51.9. (a) A person is liable in a cause of action for sexual harassment when the plaintiff proves all of the following elements:

(1) There is a business, service, or professional relationship between the plaintiff and defendant. Such a relationship includes any of the following:

(A) Physician, psychotherapist, or dentist-patient.

(B) Attorney, marriage, family or child counselor, licensed clinical social worker, master of social work, real estate agent, real estate appraiser, accountant banker, trust officer, financial planner loan officer, collection service, contractor, or escrow loan officer-client.

(C) Executor, trustee, or administrator beneficiary.

(D) Landlord or property manager-tenant.

(E) Teacher-student.

(F) A relationship that is substantially similar to any of the above.

(2) The defendant has made sexual advances, solicitations, sexual requests, or demands for sexual compliance by the plaintiff that were unwelcome and persistent or severe, continuing after a request by the plaintiff to stop.

(3) There is an inability by the plaintiff to easily terminate the relationship without tangible hardship.

(4) The plaintiff has suffered or will suffer economic loss or disadvantage or personal injury as a result of the conduct described in paragraph (2).

(b) In an action pursuant to this section, damages shall be awarded as provided by Section 52.

(c) Nothing in this section shall be construed to limit application of any other remedies provided under the law.

(d) The complaint and answer under this section shall be verified as provided for in Sections 446 and 447 of the Code of Civil Procedure.

CHAPTER 711

An act to amend Sections 6155, 6156, 6157, and 6157.2 of, to amend and renumber Sections 6157.5, 6157.6, and 6157.7 of, and to add Sections 6150, 6158, 6158.1, 6158.2, 6158.3, 6158.4, 6158.5, and 6158.7 to, the Business and Professions Code, relating to attorneys.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. The Legislature makes the following findings:

(a) The right to practice law is a "privilege burdened with conditions." Lawyers are officers of the court whose conduct directly affects how the public perceives the civil justice system (In re Rouss (N.Y. 1917), 116 N.E. 782).

(b) Lawyer advertising is a form of commercial speech, subject to First Amendment protection, but also subject to regulation to protect the public from false and misleading advertising (Bates v. State Bar of Arizona (1977), 433 U.S. 350, 53 L. Ed. 2d 810).

(c) Advertisement by way of electronic media is uniquely pervasive and intrusive. Of all forms of communication, "it is broadcasting that has received the most limited First Amendment protection" (FCC v. Pacifica Foundation (1978), 438 U.S. 726, 57 L. Ed. 2d 1073).

(d) Members of the public may be ill-informed or unaware of their legal rights which if not timely exercised, may be lost.

(e) The public has a need for accurate and truthful information about the availability of legal counsel, the nature of the services lawyers offer, and the prices lawyers charge for services, including routine and standardized legal services.

SEC. 2. Section 6155 of the Business and Professions Code is amended to read:

6155. (a) An individual, partnership, corporation, association, or any other entity shall not operate for the direct or indirect purpose, in whole or in part, of referring potential clients to attorneys, and no attorney shall accept a referral of such potential clients, unless all of the following requirements are met:

(1) The service is registered with the State Bar of California and (a) on July 1, 1988, is operated in conformity with minimum standards for a lawyer referral service established by the State Bar, or (b) upon approval by the Supreme Court of minimum standards for a lawyer referral service, is operated in conformity with those standards.

(2) The combined charges to the potential client by the referral service and the attorney to whom the potential client is referred do not exceed the total cost that the client would normally pay if no referral service were involved.

(b) A referral service shall not be owned or operated, in whole or in part, directly or indirectly, by those lawyers to whom, individually or collectively, more than 20 percent of referrals are made. For purposes of this subdivision, a referral service that is owned or operated by a bar association, as defined in the minimum standards, shall be deemed to be owned or operated by its governing committee so long as the governing committee is constituted and functions in the manner prescribed by the minimum standards.

(c) None of the following is a lawyer referral service:

(1) A plan of legal insurance as defined in Section 119.6 of the Insurance Code.

(2) A group or prepaid legal plan, whether operated by a union, trust, mutual benefit or aid association, public or private corporation, or other entity or person, which meets both of the following conditions:

(A) It recommends, furnishes, or pays for legal services to its members or beneficiaries.

(B) It provides telephone advice or personal consultation.

(3) A program having as its purpose the referral of clients to attorneys for representation on a pro bono basis.

(d) The following are in the public interest and do not constitute an unlawful restraint of trade or commerce:

(1) An agreement between a referral service and a participating attorney to eliminate or restrict the attorney's fee for an initial office consultation for each potential client or to provide free or reduced fee services.

(2) Requirements by a referral service that attorneys meet reasonable participation requirements, including experience, education, and training requirements.

(3) Provisions of the minimum standards as approved by the Supreme Court.

(4) Requirements that the application and renewal fees for certification as a lawyer referral service be determined, in whole or in part, by a consideration of any combination of the following factors: a referral service's gross annual revenues, number of panels, number of panel members, amount of fees charged to panel members, or for-profit or nonprofit status; provided that the application and renewal fees do not exceed ten thousand dollars ($10,000) or 1 percent of the gross annual revenues, whichever is less.

(5) Requirements that, to increase access to the justice system for all Californians, lawyer referral services establish separate ongoing activities or arrangements that serve persons of limited means.

(e) A violation or threatened violation of this section may be enjoined by any person.

(f) With the approval of the Supreme Court, the State Bar shall formulate and enforce rules and regulations for carrying out this section, including rules and regulations which do the following:

(1) Establish minimum standards for lawyer referral services. The minimum standards shall include provisions ensuring that panel

membership shall be open to all attorneys practicing in the geographical area served who are qualified by virtue of suitable experience, and limiting attorney registration and membership fees to reasonable sums which do not discourage widespread attorney membership.

(2) Require that an entity seeking to qualify as a lawyer referral service register with the State Bar and obtain from the State Bar a certificate of compliance with the minimum standards for lawyer referral services.

(3) Require that the certificate may be obtained, maintained, suspended, or revoked pursuant to procedures set forth in the rules and regulations.

(4) Require the lawyer referral service to pay an application and renewal fee for the certificate in such reasonable amounts as may be determined by the State Bar. The State Bar shall adopt rules authorizing the waiver or reduction of the fees upon a demonstration of financial necessity. The State Bar may require that the application and renewal fees for certification as a lawyer referral service be determined, in whole or in part, by a consideration of any combination of the following factors: a referral service's gross annual revenues, number of panels, number of panel members, amount of fees charged to panel members, or for-profit or nonprofit status; provided that the application and renewal fees do not exceed ten thousand dollars ($10,000) or 1 percent of the gross annual revenues, whichever is less.

(5) Require that, to increase access to the justice system for all Californians, lawyer referral services establish separate ongoinq activities or arrangements that serve persons of limited means.

(6) Require each lawyer who is a member of a certified lawyer referral service to comply with all applicable professional standards, rules, and regulations, and to possess a policy of errors and omissions insurance in an amount not less than one hundred thousand dollars ($100,000) for each occurrence and three hundred thousand dollars ($300,000) aggregate, per year. By rule, the State Bar may provide for alternative proof of financial responsibility to meet this requirement.

(g) Provide that cause for denial of certification or recertification or revocation of certification of a lawyer referral service shall include, but not be limited to:

(1) Noncompliance with the statutes or minimum standards governing lawyer referral services as adopted and from time to time amended.

(2) Sharing common or cross ownership, interests, or operations with any entity which engages in referrals to licensed or unlicensed health care providers.

(3) Direct or indirect consideration regarding referrals between an owner, operator, or member of a lawyer referral service and any licensed or unlicensed health care provider.

(4) Advertising on behalf of attorneys in violation of the Rules of

Professional Conduct or the Business and Professions Code.

(h) This section shall not be construed to prohibit attorneys from jointly advertising their services.

(1) Permissible joint advertising, among other things, identifies by name the advertising attorneys or law firms whom the consumer of legal services may select and initiate contact with.

(2) Certifiable referral activity involves, among other things, some person or entity other than the consumer and advertising attorney or law firms which, in person, electronically, or otherwise, refers the consumer to an attorney or law firm not identified in the advertising.

(i) A lawyer referral service certified under this section and operating in full compliance with this section, and in full compliance with the minimum standards and the rules and regulations of the State Bar governing lawyer referral services, shall not be deemed to be in violation of Section 3215 of the Labor Code or Section 750 of the Insurance Code.

(j) The payment by an attorney or law firm member of a certified referral service of the normal fees of that service shall not be deemed to be in violation of Section 3215 of the Labor Code or Section 750 of the Insurance Code, provided that the attorney or law firm member is in full compliance with the minimum standards and the rules and regulations of the State Bar governing lawyer referral services.

(k) Certifications of lawyer referral services issued by the State Bar shall not be transferable.

SEC. 3. Section 6156 is added to the Business and Professions Code, to read:

6156. (a) Any individual, partnership, association, corporation, or other entity, including, but not limited to, any person or entity having an ownership interest in a lawyer referral service, which engages, has engaged, or proposes to engage in violations of Section 6155, shall be liable for a civil penalty as defined in Sections 17206, 17206.1, and 17536, respectively, which shall be assessed and recovered in a civil action brought:

(1) In the manner specified in subdivision (a) of Section 17206 or Section 17536.

(2) By the State Bar of California.

(b) If the action is brought pursuant to subdivision (a), the court shall determine the reasonable expenses, if any, incurred by the State Bar in its investigation and prosecution of the action. In these cases, before any penalty collected is paid out pursuant to subdivision (b) of Section 17206 or 17536, the amount of the reasonable expenses incurred by the State Bar shall be paid to the State Bar and shall be deposited and used as provided in subdivision (c).

(c) If the action is brought pursuant to paragraph (2) of subdivision (a), the civil penalty shall be paid to the State Bar and shall be deposited into a special fund to be used first for the investigation and prosecution of other such cases by the State Bar,

with any excess to be used for the investigation and prosecution of attorney discipline cases.

SEC. 4. Section 6157 of the Business and Professions Code is amended to read:

6157. As used in this article, the following definitions apply:

(a) "Member" means a member in good standing of the State Bar and includes any agent of the member and any law firm or law corporation doing business in the State of California.

(b) "Lawyer" means a member of the State Bar or a person who is admitted in good standing and eligible to practice before the bar of any United States court or the highest court of the District of Columbia or any state, territory, or insular possession of the United States, or is licensed to practice law in, or is admitted in good standing and eligible to practice before the bar of the highest court of, a foreign country or any political subdivision thereof, and includes any agent of the lawyer or law firm or law corporation doing business in the this state.

(c) "Advertise" or "advertisement" means any communication, disseminated by television or radio, by any print medium including, but not limited to, newspapers and billboards, or by means of a mailing directed generally to members of the public and not to a specific person, that solicits employment of legal services provided by a member, and is directed to the general public and is paid for by, or on the behalf of, an attorney.

(d) "Electronic medium" means television, radio, or computer networks.

SEC. 5. Section 6157.2 of the Business and Professions Code is amended to read:

6157.2. No advertisement shall contain or refer to any of the following:

(a) Any guarantee or warranty regarding the outcome of a legal matter as a result of representation by the member.

(b) Statements or symbols stating that the member featured in the advertisement can generally obtain immediate cash or quick settlements.

(c) (1) An impersonation of the name, voice, photograph, or electronic image of any person other than the lawyer, directly or implicitly purporting to be that of a lawyer.

(2) An impersonation of the name, voice, photograph, or electronic image of any person, directly or implicitly purporting to be a client of the member featured in the advertisement, or a dramatization of events, unless disclosure of the impersonation or dramatization is made in the advertisement.

(3) A spokesperson, including a celebrity spokesperson, unless there is disclosure of the spokesperson's title.

(d) A statement that a member offers representation on a contingent basis unless the statement also advises whether a client will be held responsible for any costs advanced by the member when no recovery is obtained on behalf of the client. If the client will not

be held responsible for costs, no disclosure is required.

SEC. 6. Section 6158 is added to the Business and Professions Code, to read:

6158. In advertising by electronic media, to comply with Sections 61571.1 and 6157.2, the message as a whole may not be false, misleading, or deceptive, and the message as a whole must be factually substantiated. The message means the effect in combination of the spoken word, sound, background, action, symbols, visual image, or any other technique employed to create the message. Factually substantiated means capable of verification by a credible source.

SEC. 7. Section 6158.1 is added to the Business and Professions Code, to read:

6158.1. There shall be a rebuttable presumption affecting the burden of producing evidence that the following messages are false, misleading, or deceptive within the meaning of Section 6158:

(a) A message as to the ultimate result of a specific case or cases presented out of context without adequately providing information as to the facts or law giving rise to the result.

(b) The depiction of an event through methods such as the use of displays of injuries, accident scenes, or portrayals of other injurious events which may or may not be accompanied by sound effects and which may give rise to a claim for compensation.

(c) A message referring to or implying money received by or for a client in a particular case or cases, or to potential monetary recovery for a prospective client. A reference to money or monetary recovery includes, but is not limited to, a specific dollar amount, characterization of a sum of money, monetary symbols, or the implication of wealth.

SEC. 8. Section 6158.2 is added to the Business and Professions Code, to read:

6158.2. The following information shall be presumed to be in compliance with this article for purposes of advertising by electronic media, provided the message as a whole is not false, misleading, or deceptive:

(a) Name, including name of law firm, names of professional associates, addresses, telephone numbers, and the designation "lawyer," "attorney," "law firm," or the like.

(b) Fields of practice, limitation of practice, or specialization.

(c) Fees for routine legal services, subject to the requirements of subdivision (d) of Section 6157.2 and the Rules of Professional Conduct.

(d) Date and place of birth.

(e) Date and place of admission to the bar of state and federal courts.

(f) Schools attended, with dates of graduation, degrees, and other scholastic distinctions.

(g) Public or quasi-public offices.

(h) Military service.

(i) Legal authorship.

(j) Legal teaching positions.

(k) Memberships, offices, and committee assignments in bar associations.

(*l*) Memberships and offices in legal fraternities and legal societies.

(m) Technical and professional licenses.

(n) Memberships in scientific, technical, and professional associations and societies.

(o) Foreign language ability of the advertising lawyer or a member of lawyer's firm.

SEC. 9. Section 6158.3 is added to the Business and Professions Code, to read:

6158.3. In addition to any disclosure required by Section 6157.2, Section 6157.3, and the Rules of Professional Conduct, the following disclosure shall appear in advertising by electronic media. Use of the following disclosure alone may not rebut any presumption created in Section 6158.1. If an advertisement in the electronic media conveys a message portraying a result in a particular case or cases, the advertisement must state, in either an oral or printed communication, either of the following disclosures: The advertisement must adequately disclose the factual and legal circumstances that justify the result portrayed in the message, including the basis for liability and the nature of injury or damage sustained, or the advertisement must state that the result portrayed in the advertisement was dependent on the facts of that case, and that the results will differ if based on different facts.

SEC. 10. Section 6158.4 is added to the Business and Professions Code, to read:

6158.4. (a) Any person claiming a violation of Section 6158, 6158.1, or 6158.3 may file a complaint with the State Bar that states the name of the advertiser, a description of the advertisement claimed to violate these sections, and that specifically identifies the alleged violation. A copy of the complaint shall be served simultaneously upon the advertiser. The advertiser shall have nine days from the date of service of the complaint to voluntarily withdraw from broadcast the advertisement that is the subject of the complaint. If the advertiser elects to withdraw the advertisement, the advertiser shall notify the State Bar of that fact, and no further action may be taken by the complainant. The advertiser shall provide a copy of the complained of advertisement to the State Bar for review within seven days of service of the complaint. Within 21 days of the delivery of the complained of advertisement, the State Bar shall determine whether substantial evidence of a violation of these sections exists. The review shall be conducted by a State Bar attorney who has expertise in the area of lawyer advertising.

(b) (1) Upon a State Bar determination that substantial evidence of a violation exists, if the member or certified lawyer referral service withdraws that advertisement from broadcast within 72 hours, no

further action may be taken by the complainant.

(2) Upon a State Bar determination that substantial evidence of a violation exists, if the member or certified lawyer referral service fails to withdraw the advertisement within 72 hours, a civil enforcement action brought pursuant to subdivision (e) may be commenced within one year of the State Bar decision. If the member or certified lawyer referral service withdraws an advertisement upon a State Bar determination that substantial evidence of a violation exists and subsequently rebroadcasts the same advertisement without a finding by the trier of fact in an action brought pursuant to subdivision (c) or (e) that the advertisement does not violate Section 6158, 6158.1, or 6158.3, a civil enforcement action may be commenced within one year of the rebroadcast.

(3) Upon a determination that substantial evidence of a violation does not exist, the complainant is barred from bringing a civil enforcement action pursuant to subdivision (e), but may bring an action for declaratory relief pursuant to subdivision (c).

(c) Any member or certified lawyer referral service who was the subject of a complaint and any complainant affected by the decision of the State Bar may bring an action for declaratory relief in the superior court to obtain a judicial declaration of whether Section 6158, 6158.1, or 6158.3 has been violated, and, if applicable, may also request injunctive relief. Any defense otherwise available at law may be raised for the first time in the declaratory relief action, including any constitutional challenge. Any civil enforcement action filed pursuant to subdivision (e) shall be stayed pending the resolution of the declaratory relief action. The action shall be defended by the real party in interest. The State Bar shall not be considered a party to the action unless it elects to intervene in the action.

(1) Upon a State Bar determination that substantial evidence of a violation exists, if the complainant or the member or certified lawyer referral service brings an action for declaratory relief to obtain a judicial declaration of whether the advertisement violates Section 6158, 6158.1, or 6158.3, and the court declares that the advertisement violates one or more of the sections, a civil enforcement action pursuant to subdivision (e) may be filed or maintained if the member or certified lawyer referral service failed to withdraw the advertisement within 72 hours of the State Bar determination. The decision of the court that an advertisement violates Section 6158, 6158.1, or 6158.3 shall be binding on the issue of whether the advertisement is unlawful in any pending or prospective civil enforcement action brought pursuant to subdivision (e) if that binding effect is supported by the doctrine of collateral estoppel or res judicata.

If, in that declaratory relief action, the court declares that the advertisement does not violate Section 6158, 6158.1, or 6158.3, the member or lawyer referral service may broadcast the advertisement. The decision of the court that an advertisement does not violate Section 6158, 6158.1, or 6158.3 shall bar any pending or prospective

civil enforcement action brought pursuant to subdivision (e) if that prohibitive effect is supported by the doctrine of collateral estoppel or res judicata.

(2) If, following a State Bar determination that does not find substantial evidence that an advertisement violates Section 6158, 6158.1, or 6158.3, the complainant or the member or certified lawyer referral service brings an action for declaratory relief to obtain a judicial declaration of whether the advertisement violates Section 6158, 6158.1, or 6158.3, and the court declares that the advertisement violates one or more of the sections, a civil enforcement action pursuant to subdivision (e) may be filed or maintained if the member or certified lawyer referral service broadcasts the same advertisement following the decision in the declaratory relief action. The decision of the court that an advertisement violates Section 6158, 6158.1, or 6158.3 shall be binding on the issue of whether the advertisement is unlawful in any pending or prospective civil enforcement action brought pursuant to subdivision (e) if that binding effect is supported by the doctrine of collateral estoppel or res judicata.

If, in that declaratory relief action, the court declares that the advertisement does not violate Section 6158, 6158.1, or 6158.3, the member or lawyer referral service may continue broadcast of the advertisement. The decision of the court that an advertisement does not violate Section 6158, 6158.1, or 6158.3 shall bar any pending or prospective civil enforcement action brought pursuant to subdivision (e) if that prohibitive effect is supported by the doctrine of collateral estoppel or res judicata.

(d) The State Bar review procedure shall apply only to members and certified referral services. A direct civil enforcement action for a violation of Section 6158, 6158.1, or 6158.3 may be maintained against any other advertiser after first giving 14 days' notice to the advertiser of the alleged violation. If the advertiser does not withdraw from broadcast the advertisement that is the subject of the notice within 14 days of service of the notice, a civil enforcement action pursuant to subdivision (e) may be commenced. The civil enforcement action shall be commenced within one year of the date of the last publication or broadcast of the advertisement that is the subject of the action.

(e) Subject to Section 6158.5, a violation of Section 6158, 6158.1, or 6158.3 shall be cause for a civil enforcement action brought by any person residing within the State of California for an amount up to five thousand dollars ($5,000) for each individual broadcast that violates Section 6158, 6158.1, or 6158.3. Venue shall be in a county where the advertisement was broadcast.

(f) In any civil action brought pursuant to this section, the matter shall be determined according to the law and procedure relating to the trial of civil actions, including trial by jury, if demanded.

(g) The decision of the State Bar pursuant to subdivision (a) shall be admissible in the civil enforcement action brought pursuant to

subdivision (e). However, the State Bar shall not be a party or a witness in either a declaratory relief proceeding brought pursuant to subdivision (c) or the civil enforcement action brought pursuant to subdivision (e). Additionally, no direct action may be filed against the State Bar challenging the State Bar's decision pursuant to subdivision (a).

(h) Amounts recovered pursuant to this section shall be paid into the Client Security Fund maintained by the State Bar.

(i) In any civil action brought pursuant to this section, the court shall award attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure if the court finds that the action has resulted in the enforcement of an important public interest or that a significant benefit has been conferred on the public.

(j) The State Bar shall maintain records of all complainants and complaints filed pursuant to subdivision (a) for a period of seven years. If a complainant files five or more unfounded complaints within seven years, the complainant shall be considered a vexatious litigant for purposes of this section. The State Bar shall require any person deemed a vexatious litigant to post security in the minimum amount of twenty-five thousand dollars ($25,000) prior to considering any complaint filed by that person and shall refrain from taking any action until the security is posted. In any civil action arising from this section brought by a person deemed a vexatious litigant, the defendant may advise the court and trier of fact that the plaintiff is deemed to be a vexatious litigant under the provisions of this section and disclose the basis for this determination.

(k) Nothing in this section shall restrict any other right available under existing law or otherwise available to a citizen seeking redress for false, misleading, or deceptive advertisements.

SEC. 11. Section 6158.5 is added to the Business and Professions Code, to read:

6158.5. This article applies to all lawyers, members, law partnerships, law corporations, entities subject to regulation under Section 6155, advertising collectives, cooperatives, or other individuals, including nonlawyers, or groups advertising the availability of legal services. Subdivisions (a) to (k), inclusive, of Section 6158.4 do not apply to qualified legal services projects as defined in Article 14 (commencing with Section 6210) and nonprofit lawyer referral services certified under Section 6155. Sections 6157 to 6158.5, inclusive, do not apply to the media in which the advertising is displayed or to an advertising agency that prepares the contents of an advertisement and is not directly involved in the formation or operation of lawyer advertising collectives or cooperatives, referral services, or other groups existing primarily for the purpose of advertising the availability of legal services or making referrals to attorneys.

SEC. 12. Section 6158.7 is added to the Business and Professions Code, to read:

6158.7. A violation of Section 6158, 6158.1, or 6158.3 by a member

shall be cause for discipline by the State Bar. In addition to the existing grounds for initiating a disciplinary proceeding set forth in a statute or in the Rules of Professional Conduct, the State Bar may commence an investigation based upon a complaint filed by a person pursuant to Section 6158.4. The State Bar's decision pursuant to subdivision (a) of Section 6158.4 shall be admissible, but shall not be determinative, in any disciplinary proceeding brought as a result of that complaint.

SEC. 13. Section 6157.5 of the Business and Professions Code is amended and renumbered to read:

6159. The court shall report the name, address, and professional license number of any person found in violation of this article to the appropriate professional licensing agency for review and possible disciplinary action.

SEC. 14. Section 6157.6 of the Business and Professions Code is amended and renumbered to read:

6159.1. A true and correct copy of any advertisement made by a person or member shall be retained for one year by the person or member who pays for an advertisement soliciting employment of legal services.

SEC. 15. Section 6157.7 of the Business and Professions Code is amended and renumbered to read:

6159.2. (a) Nothing in this article shall be deemed to limit or preclude enforcement of any other provision of law, or of any court rule, or of the State Bar Rules of Professional Conduct.

(b) Nothing in this article shall limit the right of advertising protected under the Constitution of the State of California or of the United States. If any provision of this article is found to violate either Constitution, that provision is severable and the remaining provisions shall be enforceable without the severed provision.

CHAPTER 712

An act to amend Sections 40500.1, 40510.5, and 40523 of, to add and repeal Sections 40720 and 40721 of, and to repeal Section 40520.5 of, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 40500.1 of the Health and Safety Code is amended to read:

40500.1. (a) Except as required to comply with the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), fees assessed on stationary sources in the south coast district pursuant to Sections 40500 and 40510 shall not exceed, for any fiscal year, the actual costs of district programs

pursuant to this article for the immediately preceding fiscal year with an adjustment not greater than the change in the California Consumer Price Index, for the preceding calendar year, from January 1 of the prior year to January 1 of the current year, as determined by the Department of Industrial Relations.

(b) Unless specifically authorized by statute, the total amount of all of the fees collected by the south coast district from stationary sources of emissions in the 1995–96 fiscal year, and in each subsequent fiscal year, shall not exceed the level of expenditure in the 1993–94 fiscal year, except that the total fee amount may be adjusted annually by not more than the percentage increase in the California Consumer Price Index, as specified in subdivision (a).

(c) Any new state or federal mandate which is applicable to the south coast district on and after January 1, 1994, shall not be subject to this section. However, each of those mandates shall be separately identified by the state board in its annual report prepared pursuant to Section 42311.1.

SEC. 2. Section 40510.5 of the Health and Safety Code is amended to read:

40510.5. The south coast district shall not increase any fee charged for a permit or variance, or for any activity that is required for compliance with the rules and regulations of the south coast district, by a percentage greater than any percentage increase in the California Consumer Price Index for the preceding calendar year, from January 1 of the prior year to January 1 of the current year, as determined by the Department of Industrial Relations.

SEC. 3. Section 40520.5 of the Health and Safety Code is repealed.

SEC. 4. Section 40523 of the Health and Safety Code is amended to read:

40523. The total amount of fees collected by the south coast district in any fiscal year shall not exceed the amount of fees collected by the district in the 1993–94 fiscal year, except that the amount may be adjusted annually in the 1994–95 fiscal year and subsequent fiscal years to reflect any increase in the California Consumer Price Index for the preceding calendar year, from January 1 of the prior year to January 1 of the current year, as determined by the Department of Industrial Relations. This limitation shall not affect or limit the fees which may be imposed and collected pursuant to a state or a federal mandate imposed on or after January 1, 1994.

SEC. 5. Section 40720 is added to the Health and Safety Code, to read:

40720. (a) The budget process of any district having an annual budget of fifty million dollars ($50,000,000) or more as of January 1, 1994, shall be governed by this section. Except as otherwise provided in this section, no such district shall expend any funds during a fiscal year except in accordance with an operating budget submitted to the Legislature and the state board pursuant to this section. This section does not apply to appropriations or other authorizations made to carry out a labor contract entered into by the district board.

(b) Each operating budget submitted to the Legislature shall include, but shall not be limited to, a comprehensive plan of financial operations for the fiscal year detailing all of the following:

(1) All anticipated expenditures.

(2) All anticipated sources of income.

(3) An estimate of proposed revenue changes needed to meet anticipated changes in expenditures.

(4) Provisions for reserves for the fiscal year.

(c) The district shall publish, and mail to any person upon request, a budget summary and shall make available for inspection the complete text, and any supporting documents, of the district's preliminary budget, together with schedules of fees proposed to be adopted for the ensuing fiscal year. The preliminary budget and fee schedules shall be completed as soon as an accurate revenue projection for the ensuing fiscal year can be prepared, but in no event later than April 1 of each year. Notice of the availability of the budget summary, preliminary budget, and fee schedules shall be published in each county in the applicable district in accordance with Section 6061 of the Government Code and a copy shall be mailed to every person who filed a written request with the district. The district shall conduct at least one public workshop on the preliminary budget and fee schedules.

(d) Prior to May 15 of each year, the district board shall meet to consider and adopt a final proposed operating budget. At the meeting, prior to May 15, the preliminary budget may be revised to reflect any changed circumstances occurring after completion of the preliminary budget, but the total expenditure level for any single, major object of expenditure authorized in the final proposed operating budget as adopted shall not be increased by more than 10 percent of the total expenditure level proposed in the preliminary budget. At the meeting prior to May 15, the final fee schedules shall be adopted by the district board by rule or regulation.

(e) The district shall submit its final proposed operating budget to the Legislature and the state board annually by May 15.

(f) The appropriate policy and fiscal committees of the Legislature may hold informational hearings on the final proposed operating budget submitted by the district pursuant to subdivision (e), and on any comments and recommendations made by the state board pursuant to subdivision (g), and may make comments and formal recommendations to the district for revision of the budget.

(g) The state board shall review the final proposed operating budget submitted by the district pursuant to subdivision (e) and may make comments and formal recommendations to the district for revision of the budget. The state board shall also transmit any such comments or recommendations to the Legislature.

(h) If any formal recommendation of the state board or a committee of the Legislature proposes a budgetary change, the district may, in adopting a final district budget, take any action, within the district's statutory authority, that may be required to

effect the recommended change, including reducing any applicable fee or directing any excess funds to a reserve account within the district budget. Any such funds in the reserve account may be expended as determined by the district board. Any state board or legislative committee recommendation that proposes a budgetary change may be incorporated into the district budget only if statutory changes to authorize the change, if any are necessary, have been enacted.

(i) The final proposed operating budget submitted by the district pursuant to subdivision (e) shall become operative on July 1 unless, prior to July 1, the Legislature enacts an urgency statute amending or supplementing the proposed district budget, or the district adopts a revised final budget pursuant to subdivision (g).

(j) During the course of the fiscal year, the final district budget may be further revised by the district by the adoption of one or more supplements to the budget. Notice of a proposal to adopt a supplement to the district budget shall be given by the district not less than 30 days prior to the meeting of the district board at which the supplement will be considered and shall be published in each county in the district as applicable in accordance with Section 6061 of the Government Code. The period of notice shall commence on the first day of publication. The district shall make available to the public the complete text of the supplement and any supporting documents.

(k) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 6. Section 40721 is added to the Health and Safety Code, to read:

40721. (a) As used in this section, "three-year budget forecast" means a district's forecast of budget and staff changes proposed for the following fiscal year, and projected for the next two fiscal years.

(b) Not later than February 1 of each year, each district described in subdivision (a) of Section 40720 shall prepare and submit to the state board a three-year budget forecast which shall include the preliminary budget for the following fiscal year. The budget forecast shall be based upon a work program which shall provide a workload justification for proposed budget and staff changes and shall identify any cost savings to be achieved by program or staff changes. Budget and staff resources shall be related to existing programs and rules, and to new programs or rules to be adopted during the following years. The budget forecast shall include increases in permit fees and other fees proposed for the following fiscal year and projected for the next two fiscal years. Budget information developed by the district pursuant to any other section may be used to comply with this section.

(c) (1) The state board, in consultation with the California Environmental Protection Agency, shall review each three-year budget forecast submitted and recommend any modification or

revision to the three-year budget forecast that the state board determines to be appropriate.

(2) Following its review, but not later than March 1, the state board shall submit all of the three-year budget forecasts, together with its comments and recommendations, to the districts and to the appropriate policy and fiscal committees of the Legislature, and shall also submit its comments and recommendations to the Governor and to the California Environmental Protection Agency.

(3) The appropriate policy and fiscal committees of the Legislature may hold informational hearings on the three-year budget forecasts submitted by the state board pursuant to paragraph (2). Those legislative committees may make comments and recommendations on modifications or revisions to the three-year budget forecast. The legislative committees shall submit any such comments and recommendations to the district and the state board.

(d) The district may incorporate the recommendations of the state board and the legislative committees into the three-year budget forecast, which the district shall present at a public hearing or workshop held at least 20 days prior to the date of adoption of the work program.

(e) On or before April 1 of each year, the south coast district, as part of the summary required by subdivision (a) of Section 40452, shall report, and any other district that is subject to this section shall report, to the appropriate policy and fiscal committees of the Legislature and to the state board on any actions taken by the district to adopt, amend, or reject comments or recommendations made by the legislative committees and the state board relating to the district's three-year budget forecast and budget.

(f) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 713

An act to add Section 2933.1 to the Penal Code, relating to sentencing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 2933.1 is added to the Penal Code, to read:

2933.1. (a) Notwithstanding any other law, any person who is convicted of a felony offense listed in Section 667.5 shall accrue no more than 15 percent of worktime credit, as defined in Section 2933.

(b) The 15 percent limitation provided in subdivision (a) shall apply whether the defendant is sentenced under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2 or sentenced under some other law. However, nothing in subdivision (a) shall affect the requirement of any statute that the defendant serve a specified period of time prior to minimum parole eligibility, nor shall any offender otherwise statutorily ineligible for credit be eligible for credit pursuant to this section.

(c) Notwithstanding Section 4019 or any other provision of law, the maximum credit that may be earned against a period of confinement in, or commitment to, a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, following arrest and prior to placement in the custody of the Director of Corrections, shall not exceed 15 percent of the actual period of confinement for any person specified in subdivision (a).

(d) This section shall only apply to offenses listed in subdivision (a) that are committed on or after the date on which this section becomes operative.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the public from dangerous repeat offenders who otherwise would be released, it is necessary that this act take effect immediately.

CHAPTER 714

An act to amend Section 12071 of, to amend the heading of Chapter 2.6 (commencing with Section 12320) of Title 2 of Part 4 of, and to add Section 12316 to, the Penal Code, relating to ammunition.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who has (A) a valid federal firearms license, (B) any regulatory or business license, or licenses, required by local government, (C) a valid seller's permit issued by the State Board of Equalization, (D) a certificate of eligibility issued by the Department of Justice pursuant to paragraph (4), and (E) a license issued in the format prescribed by paragraph (6).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location

stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the 15-day waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after

January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073 and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch in height:

"IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearm safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(c) (1) As used in this article, "clear evidence of his or her identity and age" includes, but is not limited to, a motor vehicle operator's license, a state identification card, an armed forces identification card, an employment identification card which contains the bearer's signature and photograph, or any similar

documentation which provides the person delivering the firearm reasonable assurance of the identity and age of the person being delivered the firearm.

(2) As used in this article, "basic firearm safety certificate" means a basic firearm certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Commencing March 1, 1994, the Department of Justice shall keep a centralized list of all persons licensed pursuant to this section and shall make information about an individual dealer available, upon request, for one of the following purposes:

(1) For law enforcement purposes.

(2) When the information is requested by a manufacturer, an importer, a wholesaler, or a dealer for determining the validity of the license for firearm shipments.

(f) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the

Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 2. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who (A) has a valid federal firearms license, (B) has any regulatory or business license, or licenses, required by local government, (C) has a valid seller's permit issued by the State Board of Equalization, (D) has a certificate of eligibility issued by the Department of Justice pursuant to paragraph (4), (E) has a license issued in the format prescribed by paragraph (6), and (F) is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory

or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the 15-day waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of

a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073 and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch in height:

"IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearm safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined

in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(c) (1) As used in this article, "clear evidence of his or her

identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, "basic firearm safety certificate" means a basic firearm certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b), the following shall apply:

(A) A "firearms transaction record" is a record containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants,

lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a manufacturer, an importer, a wholesaler, or a dealer for determining the validity of the license for firearm shipments.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed eighty-five dollars ($85), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 3. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a

person who has (A) a valid federal firearms license, (B) any regulatory or business license, or licenses, required by local government, (C) a valid seller's permit issued by the State Board of Equalization, (D) a certificate of eligibility issued by the Department of Justice pursuant to paragraph (4), and (E) a license issued in the format prescribed by paragraph (6).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal

Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the 15-day waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a

locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch in height:

"IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearm safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the

appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities

pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(c) (1) As used in this article, "clear evidence of his or her identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, "basic firearm safety certificate" means a basic firearm certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b):

(A) A "firearms transaction record" is a record containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the

presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Commencing March 1, 1994, the Department of Justice shall keep a centralized list of all persons licensed pursuant to this section and shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(f) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 4. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who (A) has a valid federal firearms license, (B) has any regulatory or business license, or licenses, required by local government, (C) has a valid seller's permit issued by the State Board of Equalization, (D) has a certificate of eligibility issued by the Department of Justice pursuant to paragraph (4), (E) has a license issued in the format prescribed by paragraph (6), and (F) is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid

seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the 15-day waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section

12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch in height:

"IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearm safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the

firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(c) (1) As used in this article, "clear evidence of his or her identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, "basic firearm safety certificate" means a basic firearm certificate issued to the purchaser, transferee, or

person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(5) For purposes of paragraph (18) of subdivision (b), the following shall apply:

(A) A "firearms transaction record" is a record containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with paragraph (18) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from

this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed eighty-five dollars ($85), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 5. Section 12316 is added to the Penal Code, to read:

12316. (a) Any person, corporation, or dealer who sells ammunition or reloaded ammunition to a person knowing that person to be a minor under 18 years of age shall be punished by imprisonment in a county jail for a term not to exceed six months, or by a fine not to exceed one thousand dollars ($1,000), or by both the imprisonment and fine.

Proof that a person, corporation, or dealer, or his or her agent or

employee, demanded, was shown, and acted in reliance upon, bona fide evidence of majority and identity shall be a defense to any criminal prosecution under this subdivision. As used in this subdivision, "bona fide evidence of majority and identity" means a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, California state identification card, identification card issued to a member of the armed forces, or other form of identification that bears the name, date of birth, description, and picture of the person.

(b) No person prohibited from owning or possessing a firearm under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code shall own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition. A violation of this subdivision shall be punishable by up to one year in a county jail, a fine not to exceed one thousand dollars ($1,000), or both the imprisonment and fine.

(c) Unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers acting within the scope of their duties or persons exempted under subparagraph (A) of paragraph (1) of subdivision (a) of Section 12027. This subdivision shall not apply to a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, any person summoned by any of these officers to assist in making an arrest or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of this state or of the United States who is engaged in the performance of his or her duties, a person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4, or an armored vehicle guard, who is engaged in the performance of his or her duties, as defined in subdivision (e) of Section 7521 of the Business and Professions Code. A violation of this subdivision is punishable by imprisonment in a county jail for a term not to exceed six months, a fine not to exceed one thousand dollars ($1,000), or both the imprisonment and fine.

SEC. 6. The heading of Chapter 2.6 (commencing with Section 12320) of Title 2 of Part 4 of the Penal Code is amended to read:

CHAPTER 2.6. AMMUNITION

SEC. 7. (a) Section 2 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by both this bill and AB 3410. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 12071 of the Penal Code, (3) SB 1308 is not enacted or as

enacted does not amend that section, and (4) this bill is enacted after AB 3410, in which case Sections 1, 3, and 4 of this bill shall not become operative.

(b) Section 3 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by both this bill and SB 1308. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 12071 of the Penal Code, (3) AB 3410 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1308 in which case Sections 1, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by this bill, AB 3410, and SB 1308. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1995, (2) all three bills amend Section 12071 of the Penal Code, and (3) this bill is enacted after AB 3410 and SB 1308, in which case Sections 1, 2, and 3 of this bill shall not become operative.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 715

An act to amend Section 12071 of the Penal Code, relating to firearms.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who (A) has a valid federal firearms license, (B) has any regulatory or business license, or licenses, required by local government, (C) has a valid seller's permit issued by the State Board of Equalization, (D) has a certificate of eligibility issued by the Department of Justice pursuant to paragraph (4), (E) has a license issued in the format prescribed by paragraph (6), and (F) is among

those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that

issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the 15-day waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice

that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm capable of being concealed upon the person or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073 and 12077 and subdivisions (a) and (b) of Section 12072.

(7) The licensee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch in height:

"IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearm safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a

population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon presentation of proper identification, a firearms transaction record.

(c) (1) As used in this article, "clear evidence of his or her identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, a "basic firearm safety certificate" means a basic firearm certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least

nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b), the following shall apply:

(A) A "firearms transaction record" is a record containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a manufacturer, an importer, a wholesaler, or a dealer for determining the validity of the license for firearm shipments.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual

fee, not to exceed eighty-five dollars ($85), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 2. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who (A) has a valid federal firearms license, (B) has any regulatory or business license, or licenses, required by local government, (C) has a valid seller's permit issued by the State Board of Equalization, (D) has a certificate of eligibility issued by the Department of Justice pursuant to paragraph (4), (E) has a license issued in the format prescribed by paragraph (6), and (F) is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the

Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the 15-day waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events

specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073 and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of

Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch in height:

"IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned a firearm presents to the dealer a basic firearm safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be

anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(c) (1) As used in this article, "clear evidence of his or her identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, a "basic firearm safety certificate" means a basic firearm certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of

business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b), the following shall apply:

(A) A "firearms transaction record" is a record containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a manufacturer, an importer, a wholesaler, or a dealer for determining the validity of the license for firearm shipments.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed eighty-five dollars ($85), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f),

the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 3. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who (A) has a valid federal firearms license, (B) has any regulatory or business license, or licenses, required by local government, (C) has a valid seller's permit issued by the State Board of Equalization, (D) has a certificate of eligibility issued by the Department of Justice pursuant to paragraph (4), (E) has a license issued in the format prescribed by paragraph (6), and (F) is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the 15-day waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm capable of being concealed upon the person or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077 and subdivisions (a) and (b) of Section 12072.

(7) The licensee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch in height:

"IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned

the firearm presents to the dealer a basic firearm safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the

Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(c) (1) As used in this article, "clear evidence of his or her identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, a "basic firearm safety certificate" means a basic firearm certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b):

(A) A "firearms transaction record" is a record containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed eighty-five dollars ($85), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction

that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 4. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who (A) has a valid federal firearms license, (B) has any regulatory or business license, or licenses, required by local government, (C) has a valid seller's permit issued by the State Board of Equalization, (D) has a certificate of eligibility issued by the Department of Justice pursuant to paragraph (4), (E) has a license issued in the format prescribed by paragraph (6), and (F) is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing

firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the 15-day waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept

delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch

in height:

"IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearm safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the

licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(c) (1) As used in this article, "clear evidence of his or her identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, a "basic firearm safety certificate" means a basic firearm certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b):

(A) A "firearms transaction record" is a record containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed eighty-five dollars ($85), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 5. (a) Section 2 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by both this bill and AB 2449. It shall only become operative if (1) both bills are enacted and become effective January 1, 1995, (2) each bill amends Section 12071 of the Penal Code, (3) SB 1308 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2449, in which case Sections 1, 3, and 4 of this bill shall not become operative.

(b) Section 3 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by both this bill and SB 1308. It shall only become operative if (1) both bills are enacted and become effective January 1, 1995, (2) each bill amends Section 12071 of the Penal Code, (3) AB 2449 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1308, in which case Sections 1, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates amendments to Section 12071

of the Penal Code proposed by this bill, AB 2449, and SB 1308. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1995, (2) all three bills amend Section 12071 of the Penal Code, and (3) this bill is enacted after AB 2449 and SB 1308, in which case Sections 1, 2, and 3 of this bill shall not become operative.

CHAPTER 716

An act to amend Sections 11106, 12001, 12026.2, 12051, 12071, 12072, 12074, 12076, 12077, 12078, and 12552 of the Penal Code, relating to firearms.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 11106 of the Penal Code is amended to read:

11106. (a) In order to assist in the investigation of crime, the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, copies of applications for licenses to carry firearms issued pursuant to Section 12050, information reported to the Department of Justice pursuant to Section 12053, dealers' records of sales of firearms, reports provided pursuant to Section 12078, forms provided pursuant to Section 12084, reports provided pursuant to Section 12071 that are not dealers' records of sales of firearms, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this state, and shall, upon proper application therefor, furnish to the officers mentioned in Section 11105, hard copy printouts of those records as photographic, photostatic, and nonerasable optically stored reproductions.

(b) (1) Notwithstanding subdivision (a), the Attorney General shall not retain or compile any information from reports filed pursuant to subdivision (a) of Section 12078 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, from forms submitted pursuant to Section 12084 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, or from dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person. All copies of the forms submitted pursuant to Section 12084 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, or of the dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of the clearance by the Attorney General, unless the purchaser or transferor is ineligible to

take possession of the firearm. All copies of the reports filed pursuant to subdivision (a) of Section 12078 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of the receipt by the Attorney General, unless retention is necessary for use in a criminal prosecution.

(2) A peace officer, the Attorney General, a Department of Justice employee designated by the Attorney General, or any authorized local law enforcement employee shall not retain or compile any information from a firearms transaction record, as defined in paragraph (5) of subdivision (c) of Section 12071, for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person unless retention or compilation is necessary for use in a criminal prosecution or in a proceeding to revoke a license issued pursuant to Section 12071.

(3) A violation of this subdivision is a misdemeanor.

(c) (1) The Attorney General shall permanently keep and properly file and maintain all information reported to the Department of Justice pursuant to Sections 12071, 12072, 12078, 12082, and 12084 or any other law, as to pistols, revolvers, or other firearms capable of being concealed upon the person and maintain a registry thereof.

(2) The registry shall consist of all of the following:

(A) The name, address, identification of, place of birth (state or country), complete telephone number, occupation, sex, description, and all legal names and aliases ever used by the owner or person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person as listed on the information provided to the department on the Record of Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in Section 12084, or reports made to the department pursuant to Section 12078 or any other law.

(B) The name and address and other information (whether a dealer or a private party) from whom the owner acquired or the person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person as listed on the information provided to the department on the Record of Sale, the LEFT, or reports made to the department pursuant to Section 12078 or any other law.

(C) Any waiting period exemption applicable to the transaction which resulted in the owner of or the person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person acquiring or being loaned that firearm.

(D) The manufacturer's name if stamped on the firearm; model name or number if stamped on the firearm; and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, and color of the firearm.

(3) Information in the registry referred to in this subdivision shall,

upon proper application therefor, be furnished to the officers referred to in Section 11105 or to the person listed in the registry as the owner or person who is listed as being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person in the form of hard copy printouts of that information as photographic, photostatic, and nonerasable optically stored reproductions.

SEC. 2. Section 12001 of the Penal Code is amended to read:

12001. (a) As used in this title, the terms "pistol," "revolver," and "firearm capable of being concealed upon the person" shall apply to and include any device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, and which has a barrel less than 16 inches in length. These terms also include any device which has a barrel 16 inches or more in length which is designed to be interchanged with a barrel less than 16 inches in length.

(b) As used in this title, "firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel a projectile by the force of any explosion or other form of combustion.

(c) As used in Sections 12021, 12021.1, 12070, 12071, 12072, 12073, 12078, and 12101 of this code, and Sections 8100 and 8103 of the Welfare and Institutions Code, the term "firearm" includes the frame or receiver of the weapon.

(d) For the purposes of Sections 12025 and 12031, the term "firearm" also shall include any rocket, rocket propelled projectile launcher, or similar device containing any explosive or incendiary material whether or not the device is designed for emergency or distress signaling purposes.

(e) (1) For purposes of Sections 12070, 12071, and subdivisions (b), (c), and (d) of Section 12072, the term "firearm" does not include an unloaded firearm which is defined as an "antique firearm" in Section 921(a)(16) of Title 18 of the United States Code.

(2) For purposes of Sections 12070, 12071, and subdivisions (b), (c), and (d) of Section 12072, the term "firearm" does not include an unloaded firearm that meets both of the following:

(A) It is not a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) It is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations.

(f) Nothing shall prevent a device defined as a "pistol," "revolver," or "firearm capable of being concealed upon the person" from also being found to be a short-barreled shotgun or a short-barreled rifle, as defined in Section 12020.

(g) For purposes of Sections 12551 and 12552, "BB device" means any instrument which expels a metallic projectile, such as a BB or a pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun.

(h) As used in this title, "wholesaler" means any person who is licensed as a dealer pursuant to Chapter 44 (commencing with

Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto who sells, transfers, or assigns firearms, or parts of firearms, to persons who are licensed as manufacturers, importers, or gunsmiths pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, or persons licensed pursuant to Section 12071, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms in furtherance of that purpose.

"Wholesaler" shall not include a manufacturer, importer, or gunsmith who is licensed to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code or a person licensed pursuant to Section 12071 and the regulations issued pursuant thereto. A wholesaler also does not include those persons dealing exclusively in grips, stocks, and other parts of firearms that are not frames or receivers thereof.

(i) As used in Section 12071, 12072, or 12084, "application to purchase" means either of the following:

(1) The initial completion of the register by the purchaser, transferee, or person being loaned the firearm as required by subdivision (a) of Section 12076.

(2) The initial completion of the LEFT by the purchaser, transferee, or person being loaned the firearm as required by subdivision (d) of Section 12084.

(j) For purposes of Section 12023, a firearm shall be deemed to be "loaded" whenever both the firearm and the unexpended ammunition capable of being discharged from the firearm are in the immediate possession of the same person.

SEC. 2.5. Section 12001 of the Penal Code is amended to read:

12001. (a) As used in this title, the terms "pistol," "revolver," and "firearm capable of being concealed upon the person" shall apply to and include any device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, and which has a barrel less than 16 inches in length. These terms also include any device which has a barrel 16 inches or more in length which is designed to be interchanged with a barrel less than 16 inches in length.

(b) As used in this title, "firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel a projectile by the force of any explosion or other form of combustion.

(c) As used in Sections 12021, 12021.1, 12070, 12071, 12072, 12073, 12078, and 12101 of this code, and Sections 8100, 8101, and 8103 of the Welfare and Institutions Code, the term "firearm" includes the frame or receiver of the weapon.

(d) For the purposes of Sections 12025 and 12031, the term "firearm" also shall include any rocket, rocket propelled projectile launcher, or similar device containing any explosive or incendiary material whether or not the device is designed for emergency or distress signaling purposes.

(e) (1) For purposes of Sections 12070, 12071, and subdivisions

(b), (c), and (d) of Section 12072, the term "firearm" does not include an unloaded firearm which is defined as an "antique firearm" in Section 921(a)(16) of Title 18 of the United States Code.

(2) For purposes of Sections 12070, 12071, and subdivisions (b), (c), and (d) of Section 12072, the term "firearm" does not include an unloaded firearm that meets both of the following:

(A) It is not a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) It is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations.

(f) Nothing shall prevent a device defined as a "pistol," "revolver," or "firearm capable of being concealed upon the person" from also being found to be a short-barreled shotgun or a short-barreled rifle, as defined in Section 12020.

(g) For purposes of Sections 12551 and 12552, the term "BB device" means any instrument which expels a metallic projectile, such as a BB or a pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun.

(h) As used in this title, "wholesaler" means any person who is licensed as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto who sells, transfers, or assigns firearms, or parts of firearms, to persons who are licensed as manufacturers, importers, or gunsmiths pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, or persons licensed pursuant to Section 12071, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms in furtherance of that purpose.

"Wholesaler" shall not include a manufacturer, importer, or gunsmith who is licensed to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code or a person licensed pursuant to Section 12071 and the regulations issued pursuant thereto. A wholesaler also does not include those persons dealing exclusively in grips, stocks, and other parts of firearms that are not frames or receivers thereof.

(i) As used in Section 12071, 12072, or 12084, "application to purchase" means either of the following:

(1) The initial completion of the register by the purchaser, transferee, or person being loaned the firearm as required by subdivision (a) of Section 12076.

(2) The initial completion of the LEFT by the purchaser, transferee, or person being loaned the firearm as required by subdivision (d) of Section 12084.

(j) For purposes of Section 12023, a firearm shall be deemed to be "loaded" whenever both the firearm and the unexpended ammunition capable of being discharged from the firearm are in the immediate possession of the same person.

(k) For purposes of Sections 12021, 12021.1, 12025, 12070, 12072, 12073, 12078, and 12101 of this code, and Sections 8100, 8101, and 8103

of the Welfare and Institutions Code, notwithstanding the fact that the term "any firearm" may be used in those sections, each firearm or the frame or receiver of the same shall constitute a distinct and separate offense under those sections.

(*l*) For purposes of Section 12020, a violation of that section as to each firearm, weapon, or device enumerated therein shall constitute a distinct and separate offense.

SEC. 3. Section 12026.2 of the Penal Code is amended to read:

12026.2. (a) Section 12025 does not apply to, or affect, any of the following:

(1) The possession of a firearm by an authorized participant in a motion picture, television, or video production or entertainment event when the participant lawfully uses the firearm as part of that production or event or while going directly to, or coming directly from, that production or event.

(2) The possession of a firearm in a locked container by a member of any club or organization, organized for the purpose of lawfully collecting and lawfully displaying pistols, revolvers, or other firearms, while the member is at meetings of the clubs or organizations or while going directly to, and coming directly from, those meetings.

(3) The transportation of a firearm by a participant when going directly to, or coming directly from, a recognized safety or hunter safety class, or a recognized sporting event involving that firearm.

(4) The transportation of a firearm by a person listed in Section 12026 directly between any of the places mentioned in Section 12026.

(5) The transportation of a firearm by a person when going directly to, or coming directly from, a fixed place of business or private residential property for the purpose of the lawful repair or the lawful transfer, sale, or loan of that firearm.

(6) The transportation of a firearm by a person listed in Section 12026 when going directly from the place where that person lawfully received that firearm to that person's place of residence or place of business or to private property owned or lawfully possessed by that person.

(7) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show, swap meet, or similar event to which the public is invited, for the purpose of displaying that firearm in a lawful manner.

(8) The transportation of a firearm by an authorized employee or agent of a supplier of firearms when going directly to, or coming directly from, a motion picture, television, or video production or entertainment event for the purpose of providing that firearm to an authorized participant to lawfully use as a part of that production or event.

(9) The transportation of a firearm by a person when going directly to, or coming directly from, a target range, which holds a regulatory or business license, for the purposes of practicing shooting at targets with that firearm at that target range.

(10) The transportation of a firearm by a person when going directly to, or coming directly from, a place designated by a person authorized to issue licenses pursuant to Section 12050 when done at the request of the issuing agency so that the issuing agency can determine whether or not a license should be issued to that person to carry that firearm.

(11) The transportation of a firearm by a person when going directly to, or coming directly from, a law enforcement agency for the purpose of a lawful transfer, sale, or loan of that firearm pursuant to Section 12084.

(12) The transportation of a firearm by a person when going directly to, or coming directly from, a lawful camping activity for the purpose of having that firearm available for lawful personal protection while at the lawful campsite. This paragraph shall not be construed to override the statutory authority granted to the Department of Parks and Recreation or any other state or local governmental agencies to promulgate rules and regulations governing the administration of parks and campgrounds.

(13) The transportation of a firearm by a person in order to comply with subdivision (c) or (i) of Section 12078 as it pertains to that firearm.

(14) The transportation of a firearm by a person in order to utilize subdivision (*l*) of Section 12078 as it pertains to that firearm.

(15) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show or event, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, for the purpose of lawfully transferring, selling, or loaning that firearm in accordance with subdivision (d) of Section 12072.

(b) In order for a firearm to be exempted under subdivision (a), while being transported to or from a place, the firearm shall be unloaded, kept in a locked container, as defined in subdivision (d), and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

(c) This section does not prohibit or limit the otherwise lawful carrying or transportation of any pistol, revolver, or other firearm capable of being concealed upon the person in accordance with this chapter.

(d) As used in this section, "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. The term "locked container" does not include the utility or glove compartment of a motor vehicle.

SEC. 4. Section 12051 of the Penal Code is amended to read:

12051. (a) (1) Applications for licenses shall be filed in writing, signed by the applicant, and shall state the name, occupation, residence and business address of the applicant, his or her age, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon. Any license issued upon the application

shall set forth the foregoing data and shall, in addition, contain a description of the weapon or weapons authorized to be carried, giving the name of the manufacturer, the serial number, and the caliber. The license issued to the licensee may be laminated.

(2) Applications for amendments to licenses shall be filed in writing and signed by the applicant, and shall state what type of amendment is sought pursuant to subdivision (f) of Section 12050 and the reason for desiring the amendment.

(3) Applications for amendments to licenses, applications for licenses, amendments to licenses, and licenses shall be uniform throughout the state, upon forms to be prescribed by the Attorney General. The forms shall contain a provision whereby the applicant attests to the truth of statements contained in the application.

(b) Any person who files an application required by subdivision (a) knowing that statements contained therein are false is guilty of a misdemeanor.

(c) Any person who knowingly makes a false statement on the application regarding any of the following shall be guilty of a felony:

(1) The denial or revocation of a license, or the denial of an amendment to a license, issued pursuant to Section 12050.

(2) A criminal conviction.

(3) A finding of not guilty by reason of insanity.

(4) The use of a controlled substance.

(5) A dishonorable discharge from military service.

(6) A commitment to a mental institution.

(7) A renunciation of United States citizenship.

SEC. 5. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who has (A) a valid federal firearms license, (B) any regulatory or business license, or licenses, required by local government, (C) a valid seller's permit issued by the State Board of Equalization, (D) a certificate of eligibility issued by the Department of Justice pursuant to paragraph (4), and (E) a license issued in the format prescribed by paragraph (6).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant when the department's records indicate that the applicant is not a person who is prohibited from possessing

firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the 15-day waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept

delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm capable of being concealed upon the person or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077 and subdivisions (a) and (b) of Section 12072.

(7) The licensee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch

in height:

"IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearm safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or the person being loaned the firearm with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county

with a population less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(c) (1) As used in this article, "clear evidence of his or her identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, a "basic firearm safety certificate" means a basic firearm certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b):

(A) A "firearms transaction record" is a record containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(d) (1) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(2) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit corporation or as a nonprofit mutual benefit corporation, pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(A) The nonprofit public benefit corporation or nonprofit mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(B) The firearms are not pistols, revolvers, or other firearms

capable of being concealed upon the person.

(e) Commencing March 1, 1994, the Department of Justice shall keep a centralized list of all persons licensed pursuant to this section and shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

SEC. 5.1. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who has (A) a valid federal firearms license, (B) any regulatory or business license, or licenses, required by local government, (C) a valid seller's permit issued by the State Board of Equalization, (D) a certificate of eligibility issued by the Department of Justice pursuant to paragraph (4), and (E) a license issued in the format prescribed by paragraph (6).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory

or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the 15-day waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of

a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073 and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch in height:

"IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearm safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed

premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or

other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(c) (1) As used in this article, "clear evidence of his or her identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, "basic firearm safety certificate" means a basic firearm certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of

business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b):

(A) A "firearms transaction record" is a record containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Commencing March 1, 1994, the Department of Justice shall keep a centralized list of all persons licensed pursuant to this section and shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(f) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 5.2. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who (A) has a valid federal firearms license, (B) has any regulatory or business license, or licenses, required by local government, (C) has a valid seller's permit issued by the State Board of Equalization, (D) has a certificate of eligibility issued by the

Department of Justice pursuant to paragraph (4), (E) has a license issued in the format prescribed by paragraph (6), and (F) is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled

to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the 15-day waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the

dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm capable of being concealed upon the person or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077 and subdivisions (a) and (b) of Section 12072.

(7) The licensee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch in height:

"IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearm safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a

population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44

(commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(c) (1) As used in this article, "clear evidence of his or her identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, a "basic firearm safety certificate" means a basic firearm certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b):

(A) A "firearms transaction record" is a record containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of

paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed eighty-five dollars ($85), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 5.3. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who (A) has a valid federal firearms license, (B) has any regulatory or business license, or licenses, required by local government, (C) has a valid seller's permit issued by the State Board of Equalization, (D) has a certificate of eligibility issued by the Department of Justice pursuant to paragraph (4), (E) has a license issued in the format prescribed by paragraph (6), and (F) is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the 15-day waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to

the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch in height:

"IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearm safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes

possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(c) (1) As used in this article, "clear evidence of his or her identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, a "basic firearm safety certificate" means a basic firearm certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b):

(A) A "firearms transaction record" is a record containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer,

authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed eighty-five dollars ($85), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation

obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 6. Section 12072 of the Penal Code is amended to read:

12072. (a) (1) No person, corporation, or firm shall knowingly supply, sell, deliver, or give possession or control of a firearm to any person within any of the classes prohibited by Section 12021 or 12021.1.

(2) No person, corporation, or dealer shall sell, deliver, or give possession or control of a firearm to any person whom he or she has cause to believe to be within any of the classes prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(3) (A) No person, corporation, or firm shall sell, loan, or transfer a firearm to a minor.

(B) Subparagraph (A) shall not apply to or affect those circumstances set forth in subdivision (p) of Section 12078 that are exempt from the prohibitions set forth in subparagraph (A).

(4) No person, corporation, or dealer shall sell, loan, or transfer any firearm to any person whom he or she knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to any person who is not the person actually being loaned the firearm, if the person, corporation, or dealer has either of the following:

(A) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the provisions of subdivision (d).

(B) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the requirements of any exemption to the provisions of subdivision (d).

(5) No person, corporation, or dealer shall acquire a firearm for the purpose of selling, transferring, or loaning the firearm, if the person, corporation, or dealer has either of the following:

(A) In the case of a dealer, intent to violate subdivision (b) or (c).

(B) In any other case, intent to avoid either of the following:

(i) The provisions of subdivision (d).

(ii) The requirements of any exemption to the provisions of subdivision (d).

(b) No person licensed under Section 12071 shall sell, deliver, or transfer a pistol, revolver, or firearm capable of being concealed upon the person to any person under the age of 21 years or any other firearm to a person under the age of 18 years.

(c) No dealer, whether or not acting pursuant to Section 12082, shall deliver a firearm to a person, as follows:

(1) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to

the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(2) Unless unloaded and securely wrapped or unloaded and in a locked container.

(3) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age, as defined in Section 12071, to the dealer.

(4) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearm safety certificate.

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through either of the following:

(1) A licensed dealer pursuant to Section 12082.

(2) A law enforcement agency pursuant to Section 12084.

(e) No person may commit an act of collusion relating to Article 8 (commencing with Section 12800) of Chapter 6. For purposes of this section and Section 12071, collusion may be proven by any one of the following factors:

(1) Answering a test applicant's questions during an objective test relating to basic firearms safety.

(2) Knowingly misgrading the examination.

(3) Providing an advance copy of the test to an applicant.

(4) Taking or allowing another person to take the basic firearms safety course for one who is the applicant for the basic firearms safety certificate.

(5) Allowing another to take the objective test for the applicant, purchaser, or transferee.

(6) Allowing others to give unauthorized assistance during the

examination.

(7) Reference to materials during the examination and cheating by the applicant.

(8) Providing originals or photocopies of the objective test, or any version thereof, to any person other than as specified in subdivision (f) of Section 12805.

(f) No person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code shall deliver, sell, or transfer a firearm to a person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and whose licensed premises are located in this state unless one of the following conditions is met:

(1) The person presents proof of licensure pursuant to Section 12071 to that person.

(2) The person presents proof that he or she is exempt from licensure under Section 12071 to that person, in which case the person also shall present proof that the transaction is also exempt from the provisions of subdivision (d).

(g) (1) Except as provided in paragraph (2) or (3), a violation of this section is a misdemeanor.

(2) If any of the following circumstances apply, a violation of this section shall be punished by imprisonment in the state prison or in a county jail not to exceed one year, or by a fine not to exceed one thousand dollars ($1,000), or by both the fine and imprisonment:

(A) If the violation is of paragraph (1) of subdivision (a).

(B) If the defendant has a prior conviction of violating this section or former Section 12100 of this code or Section 8101 of the Welfare and Institutions Code.

(C) If the defendant has a prior conviction of violating any offense specified in subdivision (b) of Section 12021.1 or of a violation of Section 12020, 12220, 12520, or 12560.

(D) If the defendant is in a prohibited class described in Section 12021 or 12021.1 or Section 8100 or 8103 of the Welfare and Institutions Code.

(E) A violation of paragraph (2) of subdivision (a) where the firearm is a pistol, revolver, or other firearm capable of being concealed upon the person.

(F) A violation of paragraph (3) of subdivision (a) involving the sale, loan, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor.

(G) A violation of subdivision (b) involving the delivery of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor.

(H) A violation of paragraph (1), (3), (4), or (5) of subdivision (c) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(I) A violation of subdivision (d) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(J) A violation of paragraph (4) of subdivision (a).

(K) A violation of paragraph (5) of subdivision (a).

(L) A violation of subdivision (e).

(3) A violation of paragraph (2) of subdivision (a) is a misdemeanor punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both the imprisonment and fine.

SEC. 6.5. Section 12072 of the Penal Code is amended to read:

12072. (a) (1) No person, corporation, or firm shall knowingly supply, deliver, sell, or give possession or control of a firearm to any person within any of the classes prohibited by Section 12021 or 12021.1.

(2) No person, corporation, or dealer shall sell, deliver, transfer, or give possession or control of a firearm to any person whom he or she has cause to believe to be within any of the classes prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(3) (A) No person, corporation, or firm shall sell, loan, or transfer a firearm to a minor.

(B) Subparagraph (A) shall not apply to or affect those circumstances set forth in subdivision (p) of Section 12078 that are exempt from the prohibitions set forth in subparagraph (A).

(4) No person, corporation, or dealer shall sell, loan, or transfer any firearm to any person whom he or she knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to any person who is not the person actually being loaned the firearm, if the person, corporation, or dealer has either of the following:

(A) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the provisions of subdivision (d).

(B) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the requirements of any exemption to the provisions of subdivision (d).

(5) No person, corporation, or dealer shall acquire a firearm for the purpose of selling, transferring, or loaning the firearm, if the person, corporation, or dealer has either of the following:

(A) In the case of a dealer, intent to violate subdivision (b) or (c).

(B) In any other case, intent to avoid either of the following:

(i) The provisions of subdivision (d).

(ii) The requirements of any exemption to the provisions of subdivision (d).

(b) No person licensed under Section 12071 shall sell, deliver, or transfer a pistol, revolver, or firearm capable of being concealed upon the person to any person under the age of 21 years or any other firearm to a person under the age of 18 years.

(c) No dealer, whether or not acting pursuant to Section 12082, shall deliver a firearm to a person, as follows:

(1) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days

of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(2) Unless unloaded and securely wrapped or unloaded and in a locked container.

(3) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age, as defined in Section 12071, to the dealer.

(4) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearm safety certificate.

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through either of the following:

(1) A licensed dealer pursuant to Section 12082.

(2) A law enforcement agency pursuant to Section 12084.

(e) No person may commit an act of collusion relating to Article 8 (commencing with Section 12800) of Chapter 6. For purposes of this section and Section 12071, collusion may be proven by any one of the following factors:

(1) Answering a test applicant's questions during an objective test relating to basic firearms safety.

(2) Knowingly misgrading the examination.

(3) Providing an advance copy of the test to an applicant.

(4) Taking or allowing another person to take the basic firearms safety course for one who is the applicant for the basic firearms safety certificate.

(5) Allowing another to take the objective test for the applicant, purchaser, or transferee.

(6) Allowing others to give unauthorized assistance during the examination.

(7) Reference to materials during the examination and cheating by the applicant.

(8) Providing originals or photocopies of the objective test, or any version thereof, to any person other than as specified in subdivision (f) of Section 12805.

(f) No person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code shall deliver, sell, or transfer a firearm to a person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and whose licensed premises are located in this state unless one of the following conditions is met:

(1) The person presents proof of licensure pursuant to Section 12071 to that person.

(2) The person presents proof that he or she is exempt from licensure under Section 12071 to that person, in which case the person also shall present proof that the transaction is also exempt from the provisions of subdivision (d).

(g) (1) Except as provided in paragraph (2) or (3), a violation of this section is a misdemeanor.

(2) If any of the following circumstances apply, a violation of this section shall be punished by imprisonment in the state prison for two, three, or four years:

(A) If the violation is of paragraph (1) of subdivision (a).

(B) If the defendant has a prior conviction of violating this section or former Section 12100 of this code or Section 8101 of the Welfare and Institutions Code.

(C) If the defendant has a prior conviction of violating any offense specified in subdivision (b) of Section 12021.1 or of a violation of Section 12020, 12220, 12520, or of former Section 12560.

(D) If the defendant is in a prohibited class described in Section 12021 or 12021.1 or Section 8100 or 8103 of the Welfare and Institutions Code.

(E) A violation of this section by a person who actively participates in a criminal street gang as defined in Section 186.22.

(3) If any of the following circumstances apply, a violation of this section shall be punished by imprisonment in the state prison or in a county jail not to exceed one year, or by a fine not to exceed one thousand dollars ($1,000), or by both the fine and imprisonment:

(A) A violation of paragraph (2) of subdivision (a).

(B) A violation of paragraph (3) of subdivision (a) involving the sale, loan, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor.

(C) A violation of paragraph (4) of subdivision (a).

(D) A violation of paragraph (5) of subdivision (a).

(E) A violation of subdivision (b) involving the delivery of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor.

(F) A violation of paragraph (1), (3), (4), or (5) of subdivision (c) involving a pistol, revolver, or other firearm capable of being

concealed upon the person.

(G) A violation of subdivision (d) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(H) A violation of subdivision (e).

SEC. 7. Section 12074 of the Penal Code is amended to read:

12074. The register shall be prepared by and obtained from the State Printer and shall be furnished by the State Printer only to dealers on application at a cost to be determined by the Department of General Services for each 100 leaves in quadruplicate, one original and three duplicates for the making of carbon copies. The original and duplicate copies shall differ in color, and shall be in the form provided by this article.

SEC. 8. Section 12076 of the Penal Code is amended to read:

12076. (a) The purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(b) (1) Two copies of the original sheet of the register, on the date of sale, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(2) One copy of the original shall be mailed, postage prepaid, to the chief of police, or other head of the police department, of the city or county wherein the sale is made. Where the sale is made in a district where there is no municipal police department, the copy of the original sheet shall be mailed to the sheriff of the county wherein the sale is made. This copy for firearms, other than pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of receipt and no information shall be compiled therefrom.

(3) A photocopy of the original shall be provided to the purchaser by the dealer.

(4) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer.

(c) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

If the department determines that the purchaser is a person

described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

If the department determines that the copies of the register submitted to it pursuant to subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (d) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (d), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(d) The Department of Justice may charge the dealer a fee sufficient to reimburse all of the following:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by the amendments to Section 8103 of the Welfare and Institutions Code, made by the act which also added this paragraph.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by the amendments to Section 8104 of the Welfare and Institutions Code made by the act which also added this paragraph.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by the act

which added paragraph (2) to this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by the act which added paragraph (3) to this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by the act which added paragraph (4) to this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, and the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code created by the act which added paragraph (6) to this subdivision.

(e) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071.

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (d) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(f) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section and Sections 12289 and 12809.

(g) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(h) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(i) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(j) As used in this section, the following definitions shall control:

(1) "Purchaser" means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) "Purchase" means the purchase, loan, or transfer of a firearm.

(3) "Sale" means the sale, loan, or transfer of a firearm.

(4) "Seller" means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 9. Section 12077 of the Penal Code is amended to read:

12077. (a) (1) The Department of Justice shall prescribe the form of the register described in Section 12074. There shall be two forms of the register with the format set forth in paragraph (2) of this subdivision for pistols, revolvers, and other firearms capable of being concealed upon the person and the format set forth in paragraph (3) of this subdivision for all firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person.

(2) For pistols, revolvers, and other firearms capable of being concealed upon the person, information contained in the register shall be the date and time of sale, make of firearm, peace officer exemption status pursuant to subdivision (a) of Section 12078 and the agency name, dealer waiting period exemption pursuant to subdivision (n) of Section 12078, dangerous weapons permit holder waiting period exemption pursuant to subdivision (r) of Section 12078, manufacturer's name if stamped on the firearm, model name or number, if stamped on the firearm, if applicable, serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, color of the firearm, full name of purchaser, purchaser's complete date of birth, purchaser's local address, if current address is temporary, complete permanent address of purchaser, identification of purchaser, purchaser's place of birth (state or country), purchaser's complete telephone number, purchaser's occupation, purchaser's sex, purchaser's physical description, all legal

names and aliases ever used by the purchaser, yes or no answer to questions that prohibit purchase including, but not limited to, conviction of a felony as described in Section 12021 or an offense described in Section 12021.1, the purchaser's status as a person described in Section 8100 of the Welfare and Institutions Code, whether the purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, whether the purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code, signature of purchaser, signature of salesperson (as a witness to the purchaser's signature), name and complete address of the dealer or firm selling the firearm as shown on the dealer's license, the establishment number, if assigned, the dealer's complete business telephone number, any information required by Section 12082, and a statement that any person signing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register is guilty of a misdemeanor.

(3) For firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, information contained in the register shall be the date and time of sale, peace officer exemption status pursuant to subdivision (a) of Section 12078 and the agency name, auction or event waiting period exemption pursuant to subdivision (g) of Section 12078, dangerous weapons permit holder waiting period exemption pursuant to subdivision (r) of Section 12078, full name of purchaser, purchaser's complete date of birth, purchaser's local address, if current address is temporary, complete permanent address of purchaser, identification of purchaser, purchaser's place of birth (state or country), purchaser's complete telephone number, purchaser's occupation, purchaser's sex, purchaser's physical description, all legal names and aliases ever used by the purchaser, yes or no answer to questions that prohibit purchase, including, but not limited to, conviction of a felony as described in Section 12021 or an offense described in Section 12021.1, the purchaser's status as a person described in Section 8100 of the Welfare and Institutions Code, whether the purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, whether the purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code, signature of purchaser, signature of salesperson (as a witness to the purchaser's signature), name and complete address of the dealer or firm selling the firearm as shown on the dealer's license, the establishment number, if assigned, the dealer's complete business telephone number, any information required by Section 12082, and a statement that any person signing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be

provided for the register is guilty of a misdemeanor.

(b) (1) The original of each dealer's record of sale of a firearm document shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General or agents of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification.

(2) Dealers shall use ink to complete each document.

(3) The dealer or salesperson making a sale shall ensure that all information is provided legibly. The dealer and salespersons shall be informed that incomplete or illegible information will delay sales.

(4) Each original shall contain instructions regarding the procedure for completion of the form and routing of the form. Dealers shall comply with these instructions which shall include the information set forth in this subdivision.

(5) One firearm transaction shall be reported on each record of sale document. For purposes of this subdivision, a "transaction" means a single sale, loan, or transfer of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(c) As used in this section, the following definitions shall control:

(1) "Purchaser" means the purchaser or transferee of a firearm or the person being loaned a firearm.

(2) "Purchase" means the purchase, loan, or transfer of a firearm.

SEC. 10. Section 12078 of the Penal Code is amended to read:

12078. (a) (1) The preceding provisions of this article, except subdivision (e) of Section 12076, do not apply to deliveries, transfers, or sales of firearms made to persons properly identified as full-time paid peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, provided that the peace officers are authorized by their employer to carry firearms while in the performance of their duties, nor to deliveries, transfers, or sales of firearms made to authorized representatives of cities, cities and counties, counties, state or federal governments for use by those governmental agencies. Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a peace officer who is authorized to carry firearms while in the performance of his or her duties, and authorizing the purchase or transfer. The certification shall be delivered to the seller or transferor at the time of purchase or transfer and the purchaser or transferee shall identify himself or herself as the person authorized in the certification. On the day the sale, delivery, or transfer is made, where a peace officer is receiving the firearm, and either a dealer is not the seller or transferor, or is not otherwise the person responsible for the delivery of the firearm, or the transfer or sale is not conducted

through a law enforcement agency pursuant to Section 12084, the peace officer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the seller or transferor, the buyer or transferee, the firearm as is indicated in Section 12077, together with the original certification. On the day the sale, delivery, or transfer is made, where a dealer is the seller, transferor, or otherwise responsible for delivery of the firearm, the dealer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12077, together with the original certification. On the day the sale, delivery, or transfer is made, where the transfer is conducted pursuant to Section 12084, the law enforcement agency shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12084, together with the original certification. The reports which peace officers shall complete shall be provided to them by the department. No report need be submitted to the Department of Justice where a peace officer receiving the firearm received it from his or her employer in accordance with the applicable rules, regulations, or procedures of the employer.

(2) The preceding provisions of this article, except subdivision (e) of Section 12076, do not apply to deliveries, transfers, or sales of firearms made to peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 made pursuant to Section 10334 of the Public Contracts Code. On the day the sale, delivery, or transfer is made, and a dealer is not the person responsible for the delivery of the firearm or the transfer or sale is not conducted through a law enforcement agency pursuant to Section 12084, the peace officer receiving the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the seller or transferor, the buyer or transferee, and the firearm as is indicated in Section 12077. On the day the sale, delivery, or transfer is made, where a dealer is responsible for delivery of the firearm, the dealer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12077. On the day the sale, delivery, or transfer is made where the transfer is conducted pursuant to Section 12084, the law enforcement agency shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12084. The reports which peace officers shall complete shall be the same as those set forth in paragraph (1) of this subdivision and shall be provided to them by the department.

(3) Subdivision (d) of Section 12072 does not apply to sales, deliveries, or transfers of firearms to authorized representatives of cities, cities and counties, counties, or state or federal governments for those governmental agencies where the entity is acquiring the

weapon as part of an authorized, voluntary program where the entity is buying or receiving weapons from private individuals. Any weapons acquired pursuant to this subdivision shall be disposed of pursuant to the applicable provisions of Section 12028 or 12032.

(b) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(c) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family.

(2) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family and both of the following conditions are met:

(A) The person to whom the firearm is transferred shall, within 30 days of taking possession of the firearm, forward by prepaid mail or deliver in person to the Department of Justice, a report that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question. The report forms that individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(B) Prior to taking possession of the firearm, the person taking title to the firearm shall obtain a basic firearm safety certificate.

(3) As used in this subdivision, immediate family member means any one of the following relationships:

(A) Parent and child.

(B) Grandparent and grandchild.

(d) Subdivision (d) of Section 12072 shall not apply to the infrequent loan of firearms between persons who are personally known to each other for any lawful purpose, if the loan does not exceed 30 days in duration.

(e) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery of a firearm to a gunsmith for service or repair.

(f) Subdivision (d) of Section 12072 shall not apply to the sale, delivery, or transfer of firearms by persons who reside in this state to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the

regulations issued pursuant thereto.

(g) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent sale or transfer of a firearm, other than a pistol, revolver, or other firearm capable of being concealed upon the person, at auctions or similar events conducted by nonprofit mutual or public benefit corporations organized pursuant to the Corporations Code.

As used in this paragraph, the term "infrequent" shall not be construed to prohibit different local chapters of the same nonprofit corporation from conducting auctions or similar events, provided the individual local chapter conducts the auctions or similar events infrequently. It is the intent of the Legislature that different local chapters, representing different localities, be entitled to invoke the exemption created by this paragraph, notwithstanding the frequency with which other chapters of the same nonprofit corporation may conduct auctions of similar events.

(2) Subdivision (d) of Section 12072 shall not apply to the transfer of a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, if the firearm is donated for an auction or similar event described in paragraph (1) and the firearm is delivered to the nonprofit corporation immediately preceding, or contemporaneous with, the auction or similar event.

(3) The waiting period described in Sections 12071 and 12072 shall not apply to a dealer who delivers a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, at an auction or similar event described in paragraph (1), as authorized by subparagraph (C) of paragraph (1) of subdivision (b) of Section 12071. Within 48 hours of the sale, delivery, or transfer, the dealer shall forward by prepaid mail to the Department of Justice a report of the same as is indicated in paragraph (3) of subdivision (a) of Section 12077.

(h) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm for the purposes of shooting at targets if the loan occurs on the premises of a target facility which holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(i) (1) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of firearms by operation of law if all the following conditions are met:

(A) The person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms.

(B) If the firearms are pistols, revolvers, or other firearms capable of being concealed upon the person, and the person is not a levying officer as defined in Section 481.140, 511.060, or 680.210 of the Code of Civil Procedure, the person shall, within 30 days of taking possession, forward by prepaid mail or deliver in person to the

Department of Justice, a report of the same and the type of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports which individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(C) In the case of a transmutation of property between spouses made in accordance with Section 850 of the Family Code consisting of a pistol, revolver, or other firearm capable of being concealed upon the person, taking place on or after April 1, 1994, a basic firearm safety certificate shall be required prior to taking possession of the firearm.

(2) Subdivision (d) of Section 12072 shall not apply to a person who takes possession of a firearm by operation of law in a representative capacity who transfers ownership of the firearm to himself or herself in his or her individual capacity. In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, on and after April 1, 1994, that individual shall have a basic firearm safety certificate in order for the exemption set forth in this paragraph to apply.

(j) Subdivision (d) of Section 12072 shall not apply to deliveries, transfers, or returns of firearms made pursuant to Section 12028, 12028.5, or 12030.

(k) Section 12071 and subdivision (c) of Section 12072 shall not apply to:

(1) The delivery, sale, or transfer of unloaded firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person by a dealer to another dealer upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(2) The delivery, sale, or transfer of unloaded firearms by dealers to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(3) The delivery, sale, or transfer of unloaded firearms to a wholesaler if the firearms are being returned to the wholesaler and are intended as merchandise in the wholesaler's business.

(4) The delivery, sale, or transfer of unloaded firearms by one dealer to another dealer if the firearms are intended as merchandise in the receiving dealer's business upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(5) The delivery, sale, or transfer of an unloaded firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer to himself or herself.

(6) The loan of an unloaded firearm by a dealer who also operates a target facility that holds a business or regulatory license on the premises of the building designated in the license or whose building designated in the license is on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, to a

person at that target facility or that club or organization, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(*l*) A person who is exempt from subdivision (d) of Section 12072 or is otherwise not required by law to report his or her acquisition, ownership, or disposal of a pistol, revolver, or other firearm capable of being concealed upon the person or who moves out of this state with his or her pistol, revolver, or other firearm capable of being concealed upon the person may submit a report of the same to the Department of Justice in a format prescribed by the department.

(m) Subdivision (d) of Section 12072 shall not apply to the delivery, sale, or transfer of unloaded firearms to a wholesaler as merchandise in the wholesaler's business by manufacturers or importers licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, or by another wholesaler, if the delivery, sale, or transfer is made in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(n) (1) The waiting period described in Section 12071 or 12072 shall not apply to the delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer in either of the following situations:

(A) The dealer is delivering the firearm to another dealer and it is not intended as merchandise in the receiving dealer's business.

(B) The dealer is delivering the firearm to himself or herself and it is not intended as merchandise in his or her business.

(2) In order for this subdivision to apply, both of the following shall occur:

(A) If the dealer is receiving the firearm from another dealer, the dealer receiving the firearm shall present proof to the dealer delivering the firearm that he or she is licensed pursuant to Section 12071.

(B) Whether the dealer is delivering, selling, or transferring the firearm to himself or herself or to another dealer, on the date that the delivery, sale, or transfer is made, the dealer delivering the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the purchaser or transferee as is indicated in paragraph (2) of subdivision (a) of Section 12077.

(o) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery, sale, or transfer of firearms regulated pursuant to Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275), if the delivery, sale, or transfer is conducted in accordance with the applicable provisions of Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275).

(p) (1) Subdivision (d) and paragraph (3) of subdivision (a) of Section 12072 shall not apply to the loan of a firearm that is not a

pistol, revolver, or other firearm capable of being concealed upon the person to a minor, with the express permission of the parent or legal guardian of the minor, if the loan does not exceed 30 days in duration and is for a lawful purpose.

(2) Subdivision (d) and paragraph (3) of subdivision (a) of Section 12072 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by a person who is not the parent or legal guardian of the minor if all of the following circumstances exist:

(A) The minor has the written consent of his or her parent or legal guardian that is presented at the time of, or prior to the time of, the loan, or is accompanied by his or her parent or legal guardian at the time the loan is made.

(B) The minor is being loaned the firearm for the purpose of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, the nature of which involves the use of a firearm.

(C) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity.

(D) The duration of the loan does not, in any event, exceed 10 days.

(3) Subdivision (d) and paragraph (3) of subdivision (a) of Section 12072 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian if both of the following circumstances exist:

(A) The minor is being loaned the firearm for the purposes of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, the nature of which involves the use of a firearm.

(B) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity.

(4) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian.

(5) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her grandparent who is not the legal guardian of the minor if the transfer is done with the express permission of the parent or legal guardian of the minor.

(q) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a licensed hunter for use by that

licensed hunter for a period of time not to exceed the duration of the hunting season for which that firearm is to be used.

(r) The waiting period described in Section 12071, 12072, or 12084 shall not apply to the delivery, sale, or transfer of a firearm to the holder of a special weapons permit issued by the Department of Justice issued pursuant to Section 12095, 12230, 12250, or 12305. On the date that the delivery, sale, or transfer is made, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084, shall forward by prepaid mail to the Department of Justice a report of the information concerning the purchaser or transferee as described in subdivision (a) of Section 12077 or Section 12084.

(s) As used in this section:

(1) "Infrequent" has the same meaning as in paragraph (1) of subdivision (c) of Section 12070.

(2) "A person taking title or possession of firearms by operation of law" includes, but is not limited to, any of the following instances wherein an individual receives title to, or possession of, firearms:

(A) The executor or administrator of an estate if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property consisting of firearms pursuant to Section 850 of the Family Code.

(H) Firearms passing to a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code.

SEC. 10.5. Section 12078 of the Penal Code is amended to read:

12078. (a) (1) The preceding provisions of this article, except subdivision (e) of Section 12076, do not apply to deliveries, transfers, or sales of firearms made to persons properly identified as full-time paid peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, provided that the peace officers are authorized by their employer to carry firearms while in the performance of their duties, nor to deliveries, transfers, or sales of firearms made to authorized representatives of cities, cities and counties, counties, state or federal governments for use by those governmental agencies. Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or

transferee as a peace officer who is authorized to carry firearms while in the performance of his or her duties, and authorizing the purchase or transfer. The certification shall be delivered to the seller or transferor at the time of purchase or transfer and the purchaser or transferee shall identify himself or herself as the person authorized in the certification. On the day the sale, delivery, or transfer is made, where a peace officer is receiving the firearm, and either a dealer is not the seller or transferor, or is not otherwise the person responsible for the delivery of the firearm, or the transfer or sale is not conducted through a law enforcement agency pursuant to Section 12084, the peace officer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the seller or transferor, the buyer or transferee, the firearm as is indicated in Section 12077, together with the original certification. On the day the sale, delivery, or transfer is made, where a dealer is the seller, transferor, or otherwise responsible for delivery of the firearm, the dealer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12077, together with the original certification. On the day the sale, delivery, or transfer is made, where the transfer is conducted pursuant to Section 12084, the law enforcement agency shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12084, together with the original certification. The reports which peace officers shall complete shall be provided to them by the department. No report need be submitted to the Department of Justice where a peace officer receiving the firearm received it from his or her employer in accordance with the applicable rules, regulations, or procedures of the employer.

(2) The preceding provisions of this article, except subdivision (e) of Section 12076, do not apply to deliveries, transfers, or sales of firearms made to peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 made pursuant to Section 10334 of the Public Contract Code. On the day the sale, delivery, or transfer is made, and a dealer is not the person responsible for the delivery of the firearm or the transfer or sale is not conducted through a law enforcement agency pursuant to Section 12084, the peace officer receiving the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the seller or transferor, the buyer or transferee, and the firearm as is indicated in Section 12077. On the day the sale, delivery, or transfer is made, where a dealer is responsible for delivery of the firearm, the dealer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12077. On the day the sale, delivery, or transfer is made where the transfer is conducted pursuant to Section 12084, the law enforcement agency shall forward by prepaid

mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12084. The reports which peace officers shall complete shall be the same as those set forth in paragraph (1) of this subdivision and shall be provided to them by the department.

(3) Subdivision (d) of Section 12072 does not apply to sales, deliveries, or transfers of firearms to authorized representatives of cities, cities and counties, counties, or state or federal governments for those governmental agencies where the entity is acquiring the weapon as part of an authorized, voluntary program where the entity is buying or receiving weapons from private individuals. Any weapons acquired pursuant to this subdivision shall be disposed of pursuant to the applicable provisions of Section 12028 or 12032.

(b) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(c) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family.

(2) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family and both of the following conditions are met:

(A) The person to whom the firearm is transferred shall, within 30 days of taking possession of the firearm, forward by prepaid mail or deliver in person to the Department of Justice, a report that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question. The report forms that individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(B) Prior to taking possession of the firearm, the person taking title to the firearm shall obtain a basic firearm safety certificate.

(3) As used in this subdivision, immediate family member means any one of the following relationships:

(A) Parent and child.

(B) Grandparent and grandchild.

(d) Subdivision (d) of Section 12072 shall not apply to the infrequent loan of firearms between persons who are personally known to each other for any lawful purpose, if the loan does not exceed 30 days in duration.

(e) Section 12071 and subdivisions (c) and (d) of Section 12072

shall not apply to the delivery of a firearm to a gunsmith for service or repair.

(f) Subdivision (d) of Section 12072 shall not apply to the sale, delivery, or transfer of firearms by persons who reside in this state to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(g) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent sale or transfer of a firearm, other than a pistol, revolver, or other firearm capable of being concealed upon the person, at auctions or similar events conducted by nonprofit mutual or public benefit corporations organized pursuant to the Corporations Code.

As used in this paragraph, the term "infrequent" shall not be construed to prohibit different local chapters of the same nonprofit corporation from conducting auctions or similar events, provided the individual local chapter conducts the auctions or similar events infrequently. It is the intent of the Legislature that different local chapters, representing different localities, be entitled to invoke the exemption created by this paragraph, notwithstanding the frequency with which other chapters of the same nonprofit corporation may conduct auctions of similar events.

(2) Subdivision (d) of Section 12072 shall not apply to the transfer of a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, if the firearm is donated for an auction or similar event described in paragraph (1) and the firearm is delivered to the nonprofit corporation immediately preceding, or contemporaneous with, the auction or similar event.

(3) The waiting period described in Sections 12071 and 12072 shall not apply to a dealer who delivers a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, at an auction or similar event described in paragraph (1), as authorized by subparagraph (C) of paragraph (1) of subdivision (b) of Section 12071. Within 48 hours of the sale, delivery, or transfer, the dealer shall forward by prepaid mail to the Department of Justice a report of the same as is indicated in paragraph (3) of subdivision (a) of Section 12077.

(h) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm for the purposes of shooting at targets if the loan occurs on the premises of a target facility which holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(i) (1) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of firearms by operation of law if all the

following conditions are met:

(A) The person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms.

(B) If the firearms are pistols, revolvers, or other firearms capable of being concealed upon the person, and the person is not a levying officer as defined in Section 481.140, 511.060, or 680.210 of the Code of Civil Procedure, the person shall, within 30 days of taking possession, forward by prepaid mail or deliver in person to the Department of Justice, a report of the same and the type of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports which individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(C) In the case of a transmutation of property between spouses made in accordance with Section 850 of the Family Code consisting of a pistol, revolver, or other firearm capable of being concealed upon the person, taking place on or after April 1, 1994, a basic firearm safety certificate shall be required prior to taking possession of the firearm.

(2) Subdivision (d) of Section 12072 shall not apply to a person who takes possession of a firearm by operation of law in a representative capacity who transfers ownership of the firearm to himself or herself in his or her individual capacity. In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, on and after April 1, 1994, that individual shall have a basic firearm safety certificate in order for the exemption set forth in this paragraph to apply.

(j) Subdivision (d) of Section 12072 shall not apply to deliveries, transfers, or returns of firearms made pursuant to Section 12028, 12028.5, or 12030.

(k) Section 12071 and subdivision (c) of Section 12072 shall not apply to:

(1) The delivery, sale, or transfer of unloaded firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person by a dealer to another dealer upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(2) The delivery, sale, or transfer of unloaded firearms by dealers to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(3) The delivery, sale, or transfer of unloaded firearms to a wholesaler if the firearms are being returned to the wholesaler and are intended as merchandise in the wholesaler's business.

(4) The delivery, sale, or transfer of unloaded firearms by one dealer to another dealer if the firearms are intended as merchandise in the receiving dealer's business upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(5) The delivery, sale, or transfer of an unloaded firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer to himself or herself.

(6) The loan of an unloaded firearm by a dealer who also operates a target facility that holds a business or regulatory license on the premises of the building designated in the license or whose building designated in the license is on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, to a person at that target facility or that club or organization, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(*l*) A person who is exempt from subdivision (d) of Section 12072 or is otherwise not required by law to report his or her acquisition, ownership, or disposal of a pistol, revolver, or other firearm capable of being concealed upon the person or who moves out of this state with his or her pistol, revolver, or other firearm capable of being concealed upon the person may submit a report of the same to the Department of Justice in a format prescribed by the department.

(m) Subdivision (d) of Section 12072 shall not apply to the delivery, sale, or transfer of unloaded firearms to a wholesaler as merchandise in the wholesaler's business by manufacturers or importers licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, or by another wholesaler, if the delivery, sale, or transfer is made in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(n) (1) The waiting period described in Section 12071 or 12072 shall not apply to the delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer in either of the following situations:

(A) The dealer is delivering the firearm to another dealer and it is not intended as merchandise in the receiving dealer's business.

(B) The dealer is delivering the firearm to himself or herself and it is not intended as merchandise in his or her business.

(2) In order for this subdivision to apply, both of the following shall occur:

(A) If the dealer is receiving the firearm from another dealer, the dealer receiving the firearm shall present proof to the dealer delivering the firearm that he or she is licensed pursuant to Section 12071.

(B) Whether the dealer is delivering, selling, or transferring the firearm to himself or herself or to another dealer, on the date that the delivery, sale, or transfer is made, the dealer delivering the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the purchaser or transferee as is indicated in paragraph (2) of subdivision (a) of Section 12077.

(o) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery, sale, or transfer of firearms regulated pursuant to Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275), if the delivery, sale, or transfer is conducted in accordance with the applicable provisions of Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275).

(p) (1) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor, with the express permission of the parent or legal guardian of the minor, if the loan does not exceed 30 days in duration and is for a lawful purpose.

(2) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by a person who is not the parent or legal guardian of the minor if all of the following circumstances exist:

(A) The minor has the written consent of his or her parent or legal guardian that is presented at the time of, or prior to the time of, the loan, or is accompanied by his or her parent or legal guardian at the time the loan is made.

(B) The minor is being loaned the firearm for the purpose of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(C) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(D) The duration of the loan does not, in any event, exceed 10 days.

(3) Paragraph (3) of subdivision (a) and of subdivision (d) Section 12072 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian if both of the following circumstances exist:

(A) The minor is being loaned the firearm for the purposes of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(B) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational

sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment, or theatrical event, the nature of which involves the use of a firearm.

(4) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian.

(5) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her grandparent who is not the legal guardian of the minor if the transfer is done with the express permission of the parent or legal guardian of the minor.

(q) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a licensed hunter for use by that licensed hunter for a period of time not to exceed the duration of the hunting season for which that firearm is to be used.

(r) The waiting period described in Section 12071, 12072, or 12084 shall not apply to the delivery, sale, or transfer of a firearm to the holder of a special weapons permit issued by the Department of Justice issued pursuant to Section 12095, 12230, 12250, or 12305. On the date that the delivery, sale, or transfer is made, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084, shall forward by prepaid mail to the Department of Justice a report of the information concerning the purchaser or transferee as described in subdivision (a) of Section 12077 or Section 12084.

(s) Subdivision (d) of Section 12072 shall not apply to the loan of an unloaded firearm or the loan of a firearm loaded with blank cartridges for use solely as a prop for a motion picture, television, or video production or entertainment or theatrical event.

(t) As used in this section:

(1) "Infrequent" has the same meaning as in paragraph (1) of subdivision (c) of Section 12070.

(2) "A person taking title or possession of firearms by operation of law" includes, but is not limited to, any of the following instances wherein an individual receives title to, or possession of, firearms:

(A) The executor or administrator of an estate if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties if the

bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property consisting of firearms pursuant to Section 850 of the Family Code.

(H) Firearms passing to a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code.

SEC. 11. Section 12552 of the Penal Code is amended to read:

12552. (a) Every person who furnishes any BB device to any minor, without the express or implied permission of the parent or legal guardian of the minor, is guilty of a misdemeanor.

(b) As used in this section, "furnishes" means any of the following:

(1) A loan.

(2) A transfer that does not involve a sale.

SEC. 12. Section 2.5 of this bill incorporates amendments to Section 12001 of the Penal Code proposed by both this bill and SB 37 of the 1993–94 First Extraordinary Session. It shall only become operative if (1) both bills are enacted and become effective, (2) each bill amends Section 12001 of the Penal Code, and (3) this bill is enacted after SB 37, in which case, one of the following alternatives shall be applicable:

(a) If this bill becomes operative before SB 37, Section 2 of this bill shall be operative until the operative date of SB 37, at which time Section 2.5 of this bill shall become operative.

(b) If this bill becomes operative after SB 37, Section 12001 of the Penal Code, as amended by SB 37, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative, and Section 2 of this bill shall not become operative.

SEC. 13. (a) Section 5.1 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by both this bill and AB 2449. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 12071 of the Penal Code, (3) AB 3410 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2449, in which case Sections 5, 5.2, and 5.3 of this bill shall not become operative.

(b) Section 5.2 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by both this bill and AB 3410. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 12071 of the Penal Code, (3) AB 2449 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 3410, in which case Sections 5, 5.1, and 5.3 of this bill shall not become operative.

(c) Section 5.3 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by this bill, AB 2449, and AB 3410. It shall only become operative if (1) all three bills are enacted and become effective on January 1, 1995, (2) all three bills amend Section

12071 of the Penal Code, and (3) this bill is enacted after AB 2449 and AB 3410, in which case Sections 5, 5.1, and 5.2 of this bill shall not become operative.

(d) Section 6.5 of this bill incorporates amendments to Section 12072 of the Penal Code proposed by both this bill and AB 2470. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 12072 of the Penal Code, and (3) this bill is enacted after AB 2470, in which case Section 6 of this bill shall not become operative.

(e) Section 10.5 of this bill incorporates amendments to Section 12078 of the Penal Code proposed by both this bill and AB 2470. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 12078 of the Penal Code, and (3) this bill is enacted after AB 2470, in which case Section 10 of this bill shall not become operative.

CHAPTER 717

An act to amend Section 12101 of the Penal Code, relating to firearms.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 21, 1994.]

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

SECTION 1. Section 12101 of the Penal Code is amended to read:

12101. (a) (1) A minor shall not possess a pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Paragraph (1) shall not apply if one of the following circumstances exists:

(A) The minor is accompanied by his or her parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(B) The minor is accompanied by a responsible adult, the minor has the prior written consent of his or her parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(C) The minor is at least 16 years of age, the minor has the prior written consent of his or her parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful,

recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(D) The minor has the prior written consent of his or her parent or legal guardian, the minor is on lands owned or lawfully possessed by his or her parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(b) (1) A minor shall not possess live ammunition.

(2) Paragraph (1) shall not apply if one of the following circumstances exists:

(A) The minor has the written consent of his or her parent or legal guardian to possess live ammunition.

(B) The minor is accompanied by his or her parent or legal guardian.

(C) The minor is actively engaged in, or is going to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, the nature of which involves the use of a firearm.

(c) (1) Violations of this section shall be punishable by imprisonment in the state prison, or in a county jail not exceeding one year, if one of the following applies:

(A) The person has been convicted previously of violating this section.

(B) The person has been convicted previously of violating an offense specified in subdivision (b) of Section 12021.1 or in Section 12020, 12220, 12520, or 12560.

(2) Violations of this section other than those violations specified in paragraph (1) shall be punishable as a misdemeanor.

(d) In addition to any other penalty provided by law, a minor who violates this section shall suffer both of the following penalties:

(1) Performance of not less than 50 nor more than 500 hours of community service.

(2) Revocation or withholding of issuance of his or her driver's license by the Department of Motor Vehicles, until he or she attains the age of 18 years, pursuant to direction from the court. If the driver's license or driving privilege is under suspension or revocation until age 18 at the time that a violation of this section is found, the court shall direct the department to extend the period of suspension or revocation for an additional period of up to one year. If, in the judgment of the court, a personal or family hardship exists that requires the minor to have a driver's license for his or her own, or a member of his or her own family's, employment or for medically related purposes, the revocation may be waived and the court may restrict the minor's driving privilege to only those employment or

medical purposes.

(e) In a proceeding to enforce this section brought pursuant to Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of the Welfare and Institutions Code, the court may require the custodial parent or legal guardian of a minor who violates this section to participate in classes on parenting education that meet the requirements established in Section 16507.7 of the Welfare and Institutions Code.

(f) As used in this section, "responsible adult" means a person at least 21 years of age who is not within a class of persons prohibited from owning or possessing firearms by virtue of Section 12021 or 12021.1 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code.

SEC. 1.5. Section 12101 of the Penal Code is amended to read:

12101. (a) (1) A minor shall not possess a pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Paragraph (1) shall not apply if one of the following circumstances exists:

(A) The minor is accompanied by his or her parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(B) The minor is accompanied by a responsible adult, the minor has the prior written consent of his or her parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(C) The minor is at least 16 years of age, the minor has the prior written consent of his or her parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(D) The minor has the prior written consent of his or her parent or legal guardian, the minor is on lands owned or lawfully possessed by his or her parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(b) (1) A minor shall not possess live ammunition.

(2) Paragraph (1) shall not apply if one of the following

circumstances exists:

(A) The minor has the written consent of his or her parent or legal guardian to possess live ammunition.

(B) The minor is accompanied by his or her parent or legal guardian.

(C) The minor is actively engaged in, or is going to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, the nature of which involves the use of a firearm.

(c) (1) Violations of this section shall be punishable by imprisonment in the state prison, or in a county jail not exceeding one year, if one of the following applies:

(A) The person has been convicted previously of violating this section.

(B) The person has been convicted previously of violating an offense specified in subdivision (b) of Section 12021.1 or in Section 12020, 12220, 12520, or 12560.

(C) The person has been found guilty of a violation of paragraph (1) of subdivision (a).

(2) Violations of this section other than those violations specified in paragraph (1) shall be punishable as a misdemeanor.

(d) In addition to any other penalty provided by law, a minor who violates this section shall suffer revocation or withholding of issuance of his or her driver's license by the Department of Motor Vehicles, until he or she attains the age of 18 years, pursuant to direction from the court. If the driver's license or driving privilege is under suspension or revocation until age 18 at the time that a violation of this section is found, the court shall direct the department to extend the period of suspension or revocation for an additional period of up to one year. If, in the judgment of the court, a personal or family hardship exists that requires the minor to have a driver's license for his or her own, or a member of his or her own family's, employment or for medically related purposes, the revocation may be waived and the court may restrict the minor's driving privilege to only those employment or medical purposes.

(e) In a proceeding to enforce this section brought pursuant to Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of the Welfare and Institutions Code, the court may require the custodial parent or legal guardian of a minor who violates this section to participate in classes on parenting education that meet the requirements established in Section 16507.7 of the Welfare and Institutions Code.

(f) As used in this section, "responsible adult" means a person at least 21 years of age who is not within a class of persons prohibited from owning or possessing firearms by virtue of Section 12021 or 12021.1 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code.

(g) It is not the intent of the Legislature in enacting the amendments to this section or to Section 12078 to expand or narrow

the application of current statutory or judicial authority to limit the rights of minors to be loaned or to possess live ammunition or a firearm for the purpose of self-defense or the defense of others.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 3. Section 1.5 of this bill incorporates some of the amendments to Section 12101 of the Penal Code proposed by both this bill and AB 2470. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 12101 of the Penal Code, and (3) this bill is enacted after AB 2470, in which case Section 1 of this bill shall not become operative.

CHAPTER 718

An act to repeal Section 11034 of the Government Code, relating to state officers.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 11034 of the Government Code is repealed.

CHAPTER 719

An act to amend Section 9001 of, and to add Section 9417.5 to, the Public Resources Code, relating to resource conservation districts.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) Intense growth and natural disasters have affected our watersheds, contributing to the degradation of California's waters.

(b) Recent firestorms and subsequent erosion have added to nonpoint sources of water pollution.

(c) Nonpoint source pollution is best addressed by comprehensive watershed management with the cooperation of all of local, state, and federal agencies.

(d) Watershed protection, restoration, and enhancement projects are essential to the reduction of nonpoint sources of water pollution. Whenever possible, the federal government and the state should provide funding for these projects. Watershed protection, restoration, and enhancement projects offer many opportunities for the public, including education, fisheries, wildlife, recreation, and physical improvement to the natural resources in our local communities, as well as helping ensure clean water for California's domestic and agricultural uses.

(e) As local agencies, resource conservation districts are well suited to work with state and federal agencies to carry out watershed management projects and to reduce nonpoint sources of water pollution. State and federal agencies should work cooperatively with resource conservation districts, where appropriate, to accomplish watershed protection objectives through state and federal grants and contracts.

SEC. 2. Section 9001 of the Public Resources Code is amended to read:

9001. (a) The Legislature hereby declares that resource conservation is of fundamental importance to the prosperity and welfare of the people of this state. The Legislature believes that the state must assume leadership in formulating and putting into effect a statewide program of soil and water conservation and related natural resource conservation and hereby declares that this division is enacted to accomplish the following purposes:

(1) To provide the means by which the state may cooperate with the United States and with resource conservation districts organized pursuant to this division in securing the adoption in this state of conservation practices, including, but not limited to, farm, range, open space, urban development, wildlife, recreation, watershed, water quality, and woodland, best adapted to save the basic resources, soil, water, and air of the state from unreasonable and economically preventable waste and destruction.

(2) To provide for the organization and operation of resource conservation districts for the purposes of soil and water conservation, the control of runoff, the prevention and control of soil erosion, and erosion stabilization, including, but not limited to, these purposes in open areas, agricultural areas, urban development, wildlife areas, recreational developments, watershed management, the protection of water quality and water reclamation, the development of storage and distribution of water, and the treatment of each acre of land according to its needs.

(b) The districts, in addition to any other authority provided by law, may do all of the following:

(1) Ensure consistency with the authorities and policies of the United States, this state, counties, cities, public districts, other resource conservation districts, persons, associations, and corporations.

(2) With the consent of the owner, construct on privately or publicly owned lands any necessary works for the prevention and control of soil erosion and erosion stabilization.

(3) Facilitate coordinated resource management efforts for watershed restoration and enhancement.

(c) The districts shall not conserve water for power purposes or produce or distribute power for their own use or for the use of others.

SEC. 3. Section 9417.5 is added to the Public Resources Code, to read:

9417.5. It is the intent of the Legislature that concerned state agencies, in cooperation with resource conservation districts and other appropriate local entities, work with the agencies of the United States Department of Agriculture and the Department of the Interior, the Environmental Protection Agency, and other federal agencies, to maximize cooperative opportunities for federal, state, and private funding for competitive grants and contracts for watershed protection, restoration, and enhancement programs of resource conservation districts.

CHAPTER 720

An act to amend Section 42301.3 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 42301.3 of the Health and Safety Code is amended to read:

42301.3. (a) It is the intent of the Legislature that districts expedite permits for the installation of air pollution control equipment.

(b) (1) This section applies only to air pollution control projects at existing sources, where the project is necessary to comply with emission standards or limitations imposed by law, including, but not limited to, district regulations.

(2) This section does not apply to air pollution control requirements applicable to new or modified sources that are not air pollution control projects necessary to comply with emission standards or limitations imposed by law. However, this section applies to the permitting of air pollution control projects necessary to comply with emission standards or limitations imposed by law that

are intended to reduce emissions of one or more pollutants that may or may not result in an increase in emissions of a different pollutant or pollutants.

(c) Each district shall prepare, with input from the regulated community, a list of permitting criteria that identifies streamlined permit application requirements for each type of mandated air pollution control project. The list shall be consistent with the requirements of this section but may also include general facility information, a general description of the equipment affected by the air pollution control project, and specific information regarding the pollution control equipment or operational changes that will reduce emissions.

(d) (1) Within 30 days of the date that the applicant submits the information specified in paragraph (2), the district shall commence evaluation and deem the application complete, subject to the final as-built design submittal being consistent with the preliminary engineering and design information specified in subparagraph (B) of paragraph (2), for the purpose of issuing a permit to construct. Notwithstanding the limitations of Sections 65944, 65950, and 65952 of the Government Code, if final design information results in a material change in the permit evaluation that was based on the preliminary submittal, the application shall undergo a new evaluation based on the final design and the district shall promptly notify the applicant of any further information that is necessary to complete the evaluation.

(2) Prior to the district deeming the application complete pursuant to paragraph (1), the applicant shall provide the following information:

(A) The information specified in the list prepared pursuant to subdivision (c).

(B) Either of the following:

(i) Preliminary engineering and design information or other technical equipment specification data reasonably available during the initial design phase.

(ii) The manufacturer's performance warranty and the associated preliminary engineering data on which the bidding documents for the contract with the manufacturer were based.

(C) Any reasonably required information regarding an air contaminant for which emissions will increase as a result of installation of the air pollution control project.

(D) Any information necessary to make the application complete with respect to any federal requirement adopted or promulgated pursuant to the Clean Air Act (42 U.S.C. Sec. 7401 et seq.) that applies to the air pollution control project.

(e) Prior to the final approval of the applicant's permit to operate, the applicant shall provide the district with final engineering and design information and other data reasonably necessary to ensure compliance with applicable emission limitations. The information may be based on source test results and other operating data

available after startup and shakedown of the control equipment. Once the applicant has provided the information specified in this subdivision, and the final design is consistent with the preliminary design data specified in subparagraph (B) of paragraph (2) of subdivision (d) for purposes of permit evaluation, the district shall deem the application complete for the purpose of issuing a permit to operate.

(f) (1) For projects subject to this section for which the use of continuous emission monitoring systems is required, the air quality permit conditions that relate to emissions monitored by the continuous emission monitoring systems shall be sufficient for measurements and reporting as required to meet the specified emission limit as required by the rule or regulation.

(2) Nothing in this subdivision is intended to limit the applicability of standards or limitations or monitoring requirements set forth in any rule or regulation.

(g) (1) An applicant may petition the district hearing board for a variance from a requirement to install air pollution control equipment or to meet a more stringent emission standard or limitation if there is a delay in the approval of the permit to construct or permit to operate for projects under this section. The finding required by paragraph (2) of subdivision (a) of Section 42352 shall be met if the hearing board finds that the delay is not due to the lack of due diligence on the part of the applicant in the permit process, and the delay results in the inability of the applicant to legally comply with the requirement or schedule that requires the installation and operation of air pollution control equipment or achievement of a more stringent emission standard or limitation. The findings required by paragraphs (3), (4), and (5) of subdivision (a) of Section 42352 shall not apply to a variance granted pursuant to this paragraph. Paragraph (6) of subdivision (a) of Section 42352 shall apply to a variance granted pursuant to this paragraph. However, if the district requests that the applicant monitor or otherwise quantify emission levels from the source during the term of the variance pursuant to paragraph (6) of subdivision (a) of Section 42352, that monitoring or quantification required in connection with the variance shall be limited to any monitoring or quantification already being performed for the source for which the pollution control project is required. No variance shall be granted unless the hearing board makes the findings as specified in this subdivision. The hearing board shall not impose any excess emission fees in connection with the grant of the variance. In determining the term of the variance, the hearing board shall consider the period of time that the delay was not due to the lack of due diligence on the part of the applicant.

(2) For purposes of this subdivision, "due diligence" means that all of the following conditions exist:

(A) The air pollution control project proposed by the applicant was reasonably expected to achieve compliance with the pertinent emission standard or limitation.

(B) The applicant submitted the permit application in sufficient time for the district to act on the application and for the applicant to complete the project in accordance with the deadline.

(C) The applicant responded in a reasonable time to requests for additional information needed by the district to process the application or prepare any necessary environmental analyses.

(D) The district has not denied or proposed to deny the application on the basis of the project's inability to meet district permit requirements consistent with this section.

(E) During the term of the variance, the applicant will take practicable steps to ensure completion of the project as expeditiously as possible after issuance of the permit.

(3) Paragraph (1) shall not limit the authority of a district to require emissions monitoring or quantification under any other applicable provision of law.

(4) Nothing in this subdivision shall be interpreted as authorizing a hearing board to grant a variance from any requirement for a permit to build, alter, erect, or replace any air pollution control equipment included in a project subject to this section.

(h) If a supplemental or other environmental impact report or other environmental assessment is required for the project pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and the district is the lead agency, the district shall prepare and act upon the report or assessment and the permit to construct concurrently in order to streamline the approval process. However, the district shall be required to take that concurrent action only if the applicant has submitted the information required by this section to allow the district to streamline the approval process.

(i) For purposes of this section, "material change" means a change that would result in a material impact on the level of emission calculated.

CHAPTER 721

An act to amend Section 44244 of the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 44244 of the Health and Safety Code is amended to read:

44244. (a) There is hereby created a regional Mobile Source Air Pollution Reduction Review Committee. The committee shall be

comprised of one representative from each of the following agencies:

(1) The south coast district.

(2) The Southern California Association of Governments.

(3) The San Bernardino Associated Governments.

(4) The Los Angeles County Transportation Commission.

(5) The Orange County Transportation Commission.

(6) The Riverside County Transportation Commission.

(7) The state board.

(8) A regional ridesharing agency selected by the other members of the committee.

(b) Fees allocated pursuant to subdivision (c) of Section 44243 shall be used to provide grants for projects to be funded pursuant to a work program developed and adopted by the committee and approved by the south coast district board in the following manner:

(1) The work program shall be adopted by an affirmative vote of a majority of the committee members.

(2) Upon adoption of the work program, the work program shall be submitted to the south coast district board which, within 60 days, may approve the work program by majority vote of the full south coast district board. If the south coast district board fails to approve the work program within 60 days of receiving it, the work program shall be deemed disapproved. If the south coast district board disapproves the work program, it shall be returned to the committee which shall amend, readopt, and resubmit the work program to the south coast district board for approval or disapproval.

(c) The committee shall establish a technical advisory committee to assist in the development of the work program. The technical advisory committee shall include, but not be limited to, representatives of agencies which make up the committee, a representative of the cities from each county within the south coast district, and a representative of the boards of supervisors of each county within the south coast district. The technical advisory committee shall also include one or more persons who have academic training and professional expertise in air pollution control, and one person who is a mechanical engineer specializing in vehicle engines. The technical advisory committee may also include representatives of other public agencies and other interested parties that the committee may determine to be appropriate.

(d) On or before July 1, 1993, the committee shall prepare, adopt, and make available to the public clear and concise written guidelines and procedures under which projects proposed for funding under the work program will be reviewed and recommended for funding. The guidelines shall specify that only those projects that include, but are not limited to, the adoption and implementation of transportation control measures, transportation demand management programs, clean fuel and clean vehicle programs, and research and monitoring programs, in compliance with the Clean Air Act Amendments of 1990 (P.L. 101-549), the California Clean Air Act of 1988, or the plan prepared pursuant to Article 5 (commencing

with Section 40460) of Chapter 5.5 of Part 3, and that result in direct and tangible reductions in vehicular air pollution, shall be funded pursuant to the work program.

(e) The south coast district shall not be eligible for funds allocated pursuant to this section.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that a work program for funding grants is subject to the affirmative approval of the south coast district board at the earliest possible date, thereby increasing the public accountability of the members of the south coast district board, it is necessary that this act take effect immediately.

CHAPTER 722

An act to amend and renumber Sections 58700, 58701, 58702, 58703, 58704, 58705, and 58706 of, to amend and renumber the heading of Chapter 5 (commencing with Section 58700) of Part 31 of, and to repeal Section 58707 of, the Education Code, relating to schools, and making an appropriation therefor.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. The heading of Chapter 5 (commencing with Section 58700) of Part 31 of the Education Code, as added by Chapter 641 of the Statutes of 1991, is amended and renumbered to read:

CHAPTER 5.5. GANG RISK INTERVENTION PROGRAMS

SEC. 2. Section 58700 of the Education Code, as added by Chapter 641 of the Statutes of 1991, is amended and renumbered to read:

58730. The Legislature finds and declares that gang violence has caused a tremendous strain on the progress of the communities impacted. The loss of life, property, and positive opportunity for growth caused by gang violence has reached an intolerable level.

The Legislature further finds and declares that youth gang violence can be effectively reduced in California schools through the involvement of parents, teachers, school administrators, community organizations, and individuals with firsthand knowledge of the problem.

The Legislature further finds and declares that a strong and consistent relationship between the home and schools would

facilitate the learning process and inevitably help control problems associated with gang violence.

The Legislature further finds that the Gang Risk Intervention Pilot Program created by Chapter 1250 of the Statutes of 1988 achieved its stated goals and reduced the probability of youth involvement in gang activities, helped reduce high school dropout rates, reduced violence among pupils on and off school grounds, and developed techniques for early identification of at-risk youth.

SEC. 3. Section 58701 of the Education Code, as added by Chapter 641 of the Statutes of 1991, is amended and renumbered to read:

58731. It is the intent of the Legislature to establish the Gang Risk Intervention Program on a permanent basis for elementary and secondary schoolage pupils, through cooperation between individual schools and existing organizations in communities and to encourage the expansion of this program.

SEC. 4. Section 58702 of the Education Code, as added by Chapter 641 of the Statutes of 1991, is amended and renumbered to read:

58732. Unless the context otherwise requires, as used in this chapter, the following definitions shall apply:

(a) "School" means any public school consisting of kindergarten and grades 1 to 12, inclusive.

(b) "Private, nonprofit organization" means any organization registered in that category with the Secretary of State.

(c) "Gang Risk Intervention Program" means a community-based positive intervention program for elementary through high school pupils directed at all of the following:

(1) Reducing the probability of youth involvement in gang activities and consequent violence.

(2) Establishing ties, at an early age, between youth and community organizations.

(3) Committing local business and community resources to positive programming for youth.

SEC. 5. Section 58703 of the Education Code is amended and renumbered to read:

58733. (a) The State Department of Education shall establish a competitive bidding process for those county offices of education that elect to submit a grant application for the development, administration, and implementation of community-based Gang Risk Intervention Programs. The programs may be established in incorporated or unincorporated territory of a county, or both, pursuant to the following:

(1) For the 1994–95 fiscal year, the department shall distribute a standard request for proposal to county offices of education in northern California, and shall select Gang Risk Intervention Programs submitted by county offices of education in northern California to receive grants through the competitive bidding process.

(2) For the 1995–96 fiscal year, and each fiscal year thereafter, the department shall distribute a standard request for proposal to county offices of education throughout the state, and shall select Gang Risk Intervention Programs submitted by county offices of education through a competitive bidding process; provided, however, funding priority shall be given to programs authorized and funded in the 1994–95 fiscal year.

(3) Notwithstanding paragraph (1), in the 1994–95 fiscal year, funds shall be allocated to Los Angeles County pursuant to subdivision (c) of Provision 1 of Item 5460-101-001 of the Budget Act of 1994.

(4) Notwithstanding paragraph (1), in the 1994–95 fiscal year, funds allocated to Gang Risk Intervention Programs in northern California shall be allocated as follows:

(A) At least 15 percent shall be distributed to suburban county offices of education in counties with a population of at least 350,000 but not more than 500,000 people, within 100 miles of a major metropolitan city of at least 600,000 people, that has at least 40 school districts. This paragraph shall only be applicable if a county office of education meeting these requirements submits a grant application pursuant to this section.

(B) At least 40 percent shall be distributed to county offices of education in counties with a population of at least 723,000 people. This paragraph shall only be applicable if a county office of education meeting these requirements submits a grant application pursuant to this section.

(b) The State Department of Education, upon selecting Gang Risk Intervention Programs to receive grants, pursuant to subdivision (a), shall submit to the Department of the Youth Authority a request for allocation of funds. The Department of the Youth Authority shall then allocate the funds to the Gang Risk Intervention Programs consistent with the department's request and the terms of the annual Budget Act.

(c) It is the intent of the Legislature that the State Department of Education may expend up to 5 percent of the funds appropriated to Gang Risk Intervention Programs in the annual Budget Act for the costs associated with administration of the competitive bidding process and the evaluation of Gang Risk Intervention Programs.

SEC. 6. Section 58704 of the Education Code is amended and renumbered to read:

58734. (a) A county office of education acting pursuant to this chapter may request and review proposals submitted by private nonprofit organizations, and public entities which apply jointly with individual schools, for the purpose of establishing a Gang Risk Intervention Program and may award grants to these organizations, entities, and schools.

(b) A county office of education, upon making an election pursuant to Section 58733, shall distribute a standard request for proposal and shall select Gang Risk Intervention Programs to receive

grants through a competitive bidding process. Funding of grant proposals for Gang Risk Intervention Programs submitted to a county office of education shall begin no sooner than the 1994–95 fiscal year. A proposal shall include all of the following:

(1) A description of the program goals, activities, and curricula. The description of the program goals shall include a list of measurable objectives for the purpose of evaluation by the county office of education. To the extent possible, proposals shall contain empirical data on current problems, such as dropout rates and occurrences of violence on and off school grounds by schoolage individuals. Proposals shall also include the method that the school or schools will use to maintain data regarding participating pupils. The data shall be collected and maintained in coordination with school security personnel, local law enforcement personnel, and the private nonprofit community-based organization or organizations involved. The data shall include gang-related illegal incidents involving pupils, on and off school grounds.

(2) A description of the individual school or schools and the geographic area to be affected by the program.

(3) A demonstration of broad-based support for the program from business and community organizations.

(4) A clear description of the experience, expertise, and other qualifications of the private nonprofit agencies to conduct an effective intervention program in cooperation with a school or a group of schools.

(5) A proposed budget for expenditure of the grant.

(c) Programs authorized and funded in Los Angeles County pursuant to Chapter 1250 of the Statutes of 1988, that were evaluated in the Gang Risk Intervention Pilot Program Final Evaluation Report submitted by the Office of Criminal Justice Planning and determined to have achieved the stated goals of that act, shall be funded prior to the development and implementation of any new gang risk intervention programs in Los Angeles County pursuant to this chapter.

SEC. 7. Section 58705 of the Education Code is amended and renumbered to read:

58735. (a) Gang Risk Intervention Programs funded by grants awarded by a county office of education pursuant to this chapter, shall be initiated or continued at the local level through voluntary cooperation between a local school, or group of schools, and a private nonprofit community-based organization or organizations, and shall place at each school, or group of schools, a full-time, paid community-based coordinator, familiar with local gang structures, to be selected by the private nonprofit organization or organizations involved.

(b) Gang Risk Intervention Programs shall include, but are not limited to:

(1) Counseling for targeted at-risk pupils, parents, and families, individually and collectively; provided, however, that counseling

services shall not be provided by volunteer interns.

(2) Exposure to positive sports and cultural activities, promoting affiliations between youth and the local community.

(3) Job training, which may include apprentice programs in coordination with local businesses, job skills development at the school, or information about vocational opportunities in the community.

(4) Positive interaction with local law enforcement personnel.

(5) Teacher in-service training sessions.

(c) Grants for Gang Risk Intervention Programs awarded by a county office of education pursuant to this chapter shall not exceed one hundred thousand dollars ($100,000) per individual proposal.

(d) No funding shall be made available to any Gang Risk Intervention Program or facility pursuant to this section unless all of the following conditions are met:

(1) The program is open to pupils without regard to any pupil's religious beliefs or any other factor related to religion.

(2) No religious instruction is included in the program.

(3) The space in which the program is operated is not utilized in any manner to foster religion during the time used for the Gang Risk Intervention Program.

SEC. 8. Section 58706 of the Education Code is amended and renumbered to read:

58736. A county office of education acting pursuant to this chapter shall not be required to grant any funds in excess of amounts received for this purpose.

SEC. 9. Section 58707 of the Education Code is repealed.

SEC. 10. Of the amount appropriated in the Budget Act of 1994 for Gang Risk Intervention Programs pursuant to subdivision (c) of Provision 1 of Item 5460-101-001, one hundred thousand dollars ($100,000) is hereby reappropriated for the costs associated with the administration of the competitive bidding process and the evaluation of the Gang Risk Intervention Programs, and shall be allocated to the State Department of Education for those purposes.

CHAPTER 723

An act relating to water, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. (a) Pursuant to subdivision (a) of Section 12879.4 of the Water Code, the Department of Water Resources may make loans from the 1988 Water Conservation Fund, in accordance with

the Water Conservation Bond Law of 1988 (Chapter 4.7 (commencing with Section 12879) of Part 6 of Division 6 of the Water Code) to the following agencies for the following purposes:

(1) Groundwater recharge projects:

(A) Cawelo Water District pipeline construction project in Kern County.

(B) City of Pasadena aquifer storage and recovery wells and spreading basins in Los Angeles County.

(C) Calleguas Municipal Water District aquifer storage and recovery wells in Ventura County.

(D) Mojave Water Agency reach two of Mojave River pipeline construction project in San Bernardino County.

(2) Water conservation project:

(A) City of Escondido reclaimed water retrofit in San Diego County.

(3) Local water supply projects.

(A) San Juan Basin Authority groundwater extraction desalter in Orange County.

(B) Joshua Basin Water District distribution pipeline system in San Bernardino County.

(C) City of Bakersfield water storage tanks in Kern County.

(b) The Department of Water Resources shall determine eligibility for, and the amount of, any loan authorized by subdivision (a), in accordance with the Water Conservation Bond Law of 1988 (Chapter 4.7 (commencing with Section 12879) of Part 6 of Division 6 of the Water Code) and may make those loans in accordance with that bond law.

SEC. 2. (a) Pursuant to Sections 14011 and 14012 of the Water Code, the Department of Water Resources may make grants from the California Safe Drinking Water Fund in accordance with the California Safe Drinking Water Bond Law of 1988 (Chapter 16 (commencing with Section 14000) of Division 7 of the Water Code), to the following agencies for the purposes of financing proposed projects and investigations to identify alternatives for system improvements:

(1) Sonoma County Service Area No. 37 in Sonoma County.

(b) The Department of Water Resources shall determine eligibility for, and the amount of, any grant authorized in subdivision (a), in accordance with the California Safe Drinking Water Bond Law of 1988 (Chapter 16 (commencing with Section 14000) of Division 7 of the Water Code) and may make those grants in accordance with that bond law.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to remedy critical water quality and supply problems, thereby protecting the public health and safety, it is necessary that this act take effect immediately.

CHAPTER 724

An act to amend Sections 460, 461, 462, 463, and 14051 of, and to amend the heading of Chapter 6 (commencing with Section 460) of Division 1 of, and the heading of Article 7 (commencing with Section 13550) of Chapter 7 of Division 7 of, the Water Code, relating to water.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. The heading of Chapter 6 (commencing with Section 460) of Division 1 of the Water Code is amended to read:

CHAPTER 6. WATER REUSE

SEC. 2. Section 460 of the Water Code is amended to read:

460. This chapter shall be known as and may be cited as the Water Reuse Law of 1974.

SEC. 3. Section 461 of the Water Code is amended to read:

461. It is hereby declared that the primary interest of the people of the state in the conservation of all available water resources requires the maximum reuse of reclaimed water in the satisfaction of requirements for beneficial uses of water.

SEC. 4. Section 462 of the Water Code is amended to read:

462. The department shall conduct studies and investigations on the availability and quality of wastewater and the uses of reclaimed water for beneficial purposes, including, but not limited to, groundwater recharge, municipal and industrial use, irrigation use, and cooling for thermal electric powerplants.

SEC. 5. Section 463 of the Water Code is amended to read:

463. The department shall study and investigate the technology of the reuse of reclaimed water and further the development of the technology of the reclamation of water.

SEC. 6. The heading of Article 7 (commencing with Section 13550) of Chapter 7 of Division 7 of the Water Code is amended to read:

Article 7. Water Reuse

SEC. 7. Section 14051 of the Water Code is amended to read:

14051. The Legislature finds and declares as follows:

(a) Clean water is essential to the public health, safety, and welfare.

(b) Clean water fosters the beauty of California's environment, the expansion of industry and agriculture, maintains fish and wildlife, and supports recreation.

(c) California's abundant lakes and ponds, streams and rivers, coastline, and groundwater are threatened with pollution, which could threaten public health and impede economic and social growth if left unchecked.

(d) The state's growing population has increasing needs for clean water supplies and adequate treatment facilities.

(e) It is of paramount importance that the limited water resources of the state be protected from pollution, conserved, and reclaimed whenever possible to ensure continued economic, community, and social growth.

(f) The chief cause of water pollution is the discharge of inadequately treated waste into the waters of the state.

(g) Local agencies have the primary responsibility for construction, operation, and maintenance of facilities to cleanse our waters.

(h) Rising costs of construction and technological changes have pushed the cost of constructing treatment facilities beyond the reach of many small communities.

(i) Because water knows no political boundaries, it is desirable for the state to contribute to construction of needed facilities in order to meet its obligations to protect and promote the health, safety, and welfare of its people and environment.

(j) The people of California have a primary interest in the development of facilities to reclaim water to supplement existing water supplies and to assist in meeting the future water needs of the state.

(k) A significant portion of the future water needs of California may be met by the use of reclaimed water.

(*l*) Local public agencies have the primary responsibility for the construction, operation, and maintenance of water reclamation facilities.

(m) Local public agencies need financial assistance to make cost-effective reclamation projects financially feasible.

(n) (1) It is also the intent of this chapter to provide special assistance to small communities to construct facilities necessary to eliminate water pollution and public health hazards.

(2) It is also the intent of this chapter to provide funds for the design and construction of eligible water reclamation projects and for the development and implementation of programs and activities that lead to increased use of reclaimed water in California.

CHAPTER 725

An act to add Sections 44036.2 and 44036.3 to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 44036.2 is added to the Health and Safety Code, to read:

44036.2. (a) To ensure uniform and consistent inspection, tests, and repairs by all qualified smog check technicians and licensed smog check stations, and to ensure consumer protection, manufacturers of motor vehicles shall provide, or cause to be provided, all emission control system service information that is necessary to properly inspect, test and repair those vehicles. Unless otherwise provided, that information shall be required for all 1980 and newer model-year vehicles and shall consist of all of the following:

(1) General specifications showing the make, model, and classification of the vehicle.

(2) The identification, location, and description of all emission control equipment on the vehicle.

(3) The manufacturer's recommended visual and functional inspection procedures for each emissions-related component.

(4) Air injection and evaporative emission purge strategies.

(5) All vehicle manufacturer-specific data stream information, excluding bidirectional control information and reprogramming information unless required by state or federal statute or regulation.

(b) Beginning with the 1998 model year, all emissions-related information required by this section, including diagnostic, service, and training information supplied by vehicle manufacturers to any franchised dealer, shall be provided in an electronic format that is readily accessible, or that can be made readily accessible, to private diagnostic assistance service information vendors or intermediaries, if that information is provided or made available in this format by manufacturers to dealers. In determining the allowable format, the state board shall ensure compatibility with any service information format requirements specified by the Environmental Protection Agency.

(c) (1) The state board shall require motor vehicle manufacturers to provide the service information necessary to comply with this section as a condition of certification.

(2) Should the manufacturer fail to provide the service information necessary to comply with subdivision (a) for any vehicle within an engine family within one year of its retail introduction, the state board may withhold certification for all engine families for

subsequent model years, until such time as the manufacturer provides the necessary service information.

(3) The department shall periodically conduct surveys to determine whether the service information requirements are being fulfilled by actual field availability of the information.

(d) The manufacturer shall make accessible, through the vehicle's standard data link, the version number or part number of the vehicle's current computer memory program to allow smog check technicians to determine if the manufacturer's most up-to-date program is installed in the vehicle's computer. This requirement shall apply to all vehicles with reprogrammable computer memory in the vehicle's computer beginning with the 1999 model year. Until the manufacturer provides an electronic computer program identifier system, the manufacturer shall use a mechanical identification system to identify the computer's current program.

(e) (1) Those manufacturers that do not use reprogrammable technology for the vehicle's computer shall use either a mechanical or electronic identification system to identify the current program of the vehicle's computer.

(2) The manufacturer shall also provide or cause to be provided an engine family reprogramming cross-reference to aid smog check technicians in determining the proper computer memory program for that engine. The cross-reference shall either be published by the manufacturer or made available to private diagnostic service information vendors or intermediaries for compilation and distribution.

(f) (1) The information required to be provided under this section shall be limited to only that information which is made available by manufacturers to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines needed to make use of the emissions control diagnostic system prescribed under Section 207 of the Federal Clean Air Act Amendments of 1990 and such other information including instructions for making emission-related diagnosis and repairs. If any of the emissions-related service information required by this section is provided to the manufacturer's franchised dealers in advance of the specific requirements of this section, that information shall also be made available by manufacturers, directly or indirectly, to smog check stations and repair technicians. Manufacturers shall only be required to provide information to vendors or intermediaries in the same manner and format as provided to franchised dealers.

(2) The service information shall be made compatible with computer systems commonly used in the aftermarket repair industry. In addition, the vendor or intermediary may offer the information by other common distribution means when electronic means are unavailable. No information or format will be required in the service information beyond that which is provided by new car manufacturers to franchise dealers.

(g) The provisions of this section that apply with respect to 1994

and newer model-year vehicles shall become inoperative if the state board determines that the Environmental Protection Agency has adopted rules relative to the provision of emissions-related service information for 1994 and newer model-year vehicles.

SEC. 2. Section 44036.3 is added to the Health and Safety Code, to read:

44036.3. (a) The department shall direct licensed smog check stations and technicians to private diagnostic assistance service information vendors or intermediaries who possess the electronically formatted information acquired under Section 44036.2, or with any other emissions-related information needed to improve the effectiveness of smog checks.

(b) The provisions of this section that apply with respect to 1994 and newer model-year vehicles shall become inoperative if the state board determines that the Environmental Protection Agency has adopted rules relative to the provision of emissions-related service information for 1994 and newer model-year vehicles.

CHAPTER 726

An act to amend Sections 905.3, 930, 935.6, 11030.1, 11031, 13909, 13910, 13920, 13943.2, 16304.1, 16400, 16401, and 21152 of, to add Sections 965.1 and 17051.5 to, and to repeal Sections 13921, 13922, 13925, and 13927 of, the Government Code, to amend Section 5101 of, and to add Article 1.5 (commencing with Section 20104) to Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, and to amend Sections 6901, 6981, 7091, 8126, 8191, 9151, 9196, 11551, 11596, 12951, 12977, 19302, 19306, 19314, 19441, 21013, 30361, 30421, 32401, 32440, 38601, 38631, 40111, 40121, 41100, 41107, 43451, 43491, 45651, and 45801 of the Revenue and Taxation Code, relating to state boards, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. It is the intent of the Legislature that the State Board of Control use its reduced General Fund budgetary resources to perform the following duties:

(a) Administer Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code in a manner that allows the state to conduct timely claim investigations of unjust claims, correct the conditions and practices that give rise to those claims, and settle just claims in order to avoid the costs of litigation.

(b) Adjudicate those protests of proposed state procurement contract awards that are filed under Section 10306 and subdivision

(f) of Section 12102 of the Public Contract Code.

(c) Manage those special claims programs that have been, or may in the future be, enacted to address special circumstances.

SEC. 2. Section 905.3 of the Government Code is amended to read:

905.3. Notwithstanding any other provision of law to the contrary, no claim shall be submitted by a local agency or school district, nor shall a claim be considered by the State Board of Control pursuant to Section 905.2, if that claim is eligible for consideration by the Commission on State Mandates pursuant to Article 1 (commencing with Section 17550) of Chapter 4 of Part 7 of Division 4 of Title 2.

SEC. 3. Section 930 of the Government Code is amended to read:

930. (a) Any state agency may include in any written agreement to which the agency is a party, provisions governing the following:

(1) The presentation, by or on behalf of any party thereto, of any or all claims that are required to be presented to the board arising out of or related to the agreement.

(2) The consideration and payment of the claims described in paragraph (1).

(b) As used in this section, "state agency" means any office, officer, department, division, bureau, board, commission or agency of the state, claims against which are paid by warrants drawn by the Controller.

SEC. 4. Section 935.6 of the Government Code is amended to read:

935.6. (a) The State Board of Control may authorize any state agency to settle and pay claims filed pursuant to subdivision (c) of Section 905.2 where the settlement does not exceed one thousand dollars ($1,000) or that lesser amount as the board may determine, or to reject the claim and provide the notice required by Section 913. The board may require state agencies that it so authorizes to report annually to the board concerning the claims resolved pursuant to this section.

(b) As used in this section, "state agency" means any office, officer, department, division, bureau, board, commission, or agency of the state, claims against which are paid by warrants drawn by the Controller.

SEC. 5. Section 965.1 is added to the Government Code, to read:

965.1. Pursuant to Section 13909, the State Board of Control may delegate to the executive officer the authority to allow a claim filed pursuant to subdivision (c) of Section 905.2 where the settlement amount of that claim does not exceed fifty thousand dollars ($50,000), or to reject any claim as so described.

SEC. 6. Section 11030.1 of the Government Code is amended to read:

11030.1. When a state employee not covered by Part 2.6 (commencing with Section 19815) of Division 5 dies while traveling on official state business the state shall, under rules and regulations

adopted by the State Board of Control, pay the traveling expenses necessary to return the body to his or her official headquarters or the place of burial. This subdivision shall not be construed to authorize the payment of the traveling expenses, either going or returning, of one accompanying that body.

SEC. 7. Section 11031 of the Government Code is amended to read:

11031. The headquarters of elective constitutional officers (other than Members of the Legislature) shall be established by the filing of a written statement with the State Board of Control that certifies that the selected headquarters is the place where the officer spends the largest portion of his or her regular workdays or working time.

SEC. 8. Section 13909 of the Government Code is amended to read:

13909. (a) The board shall appoint an executive officer who shall hold office at its pleasure. It may also employ those personnel, including examiners, as it deems necessary for the performance of its duties.

(b) The executive officer shall execute those duties and responsibilities as may be delegated by the board. The board may, except as otherwise provided in this section, delegate any statutory power of the board to the executive officer, or any examiner, employee, or committee as the board may designate, by means of a board order that is adopted by a majority of all of the board's members and that prescribes the limits of the delegation.

(c) This section shall not be construed to authorize the board to delegate the authority to allow a claim filed pursuant to subdivision (c) of Section 905.2 that exceeds fifty thousand dollars ($50,000).

SEC. 9. Section 13910 of the Government Code is amended to read:

13910. The executive officer, or his or her designee, shall keep a full and true record of all proceedings of the board, issue all necessary process, writs, warrants, and notices, and perform those other duties as the board prescribes. The executive officer and the deputy executive officers, or their designees may administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state.

SEC. 10. Section 13920 of the Government Code is amended to read:

13920. The board may adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3:

(a) Limiting the amount, time, and place of expenses and allowances to be paid to elected state officers, and officers and employees of the state provided for in Article VI of the California Constitution, while traveling on official state business.

(b) Governing the presentation and audit of claims against the state for which an appropriation has been made or for which a state

fund is available.

(c) Governing any other matter over which it has jurisdiction.

SEC. 11. Section 13921 of the Government Code is repealed.

SEC. 12. Section 13922 of the Government Code is repealed.

SEC. 13. Section 13925 of the Government Code is repealed.

SEC. 14. Section 13927 of the Government Code is repealed.

SEC. 15. Section 13943.2 of the Government Code is amended to read:

13943.2. Upon authorization of the board a state agency may refrain from collecting taxes, licenses, fees, or money owing to the state for any reason where the amount to be collected is two hundred fifty dollars ($250) or less. State agencies desiring to secure this authority shall file an application therefor with the board accompanied by a statement of circumstances. Nothing contained in this section shall be construed as releasing any person from the payment of any money due the state.

SEC. 16. Section 16304.1 of the Government Code is amended to read:

16304.1. Disbursements in liquidation of encumbrances may be made before or during the two years following the last day an appropriation is available for encumbrance, except in the case of a fund made up of federal funds. Disbursements in liquidation of encumbrances may be made before or during the four years following the last day an appropriation of federal funds is available for encumbrance. Whenever, during either liquidation period, the Director of Finance determines that the project for which the appropriation was made is completed and that a portion of the appropriation is not necessary for disbursements, that portion shall, upon order of the Director of Finance, revert to and become a part of the fund from which the appropriation was made. Upon the expiration of two years, or four years in the case of a fund made up of federal funds, following the last day of the period of its availability, the undisbursed balance in any appropriation shall revert to and become a part of the fund from which the appropriation was made. Subsequent to reversion any unpaid encumbrance against the appropriation may be paid from any current appropriations available for the same purposes.

To the extent that appropriations are exempt from limitations as to periods of availability under Section 16304, they shall not be subject to the provisions of this section.

SEC. 17. Section 16400 of the Government Code is amended to read:

16400. (a) Any state agency for which an appropriation is made, may, without at the time furnishing vouchers and itemized statements, draw from that appropriation for use as a revolving fund any of the following:

(1) A sum not to exceed 3 percent of the total amount of the appropriation.

(2) With the approval of the Director of Finance, a sum in excess

of 3 percent but not in excess of 10 percent of the total amount of the appropriation.

(3) With the approval of the Director of Finance and the Controller, a sum in excess of 10 percent of the total amount of the appropriation.

(b) With the approval of the Director of Finance, any deficiency or shortfall in a state agency's revolving fund established pursuant to subdivision (a) may be replenished from an existing appropriation designated by the agency.

SEC. 18. Section 16401 of the Government Code is amended to read:

16401. Any revolving fund drawn under the provisions of Section 16400 may only be used in accordance with law for payment of compensation earned, traveling expenses, traveling expense advances, or where immediate payment is otherwise necessary.

SEC. 19. Section 17051.5 is added to the Government Code, to read:

17051.5. A state agency shall notify the Treasurer not to pay a warrant drawn by the Controller upon that agency's request whenever that agency has reason to believe that the Controller has drawn or is about to draw his or her warrant without legal authority, for a larger amount than is owed by the state, or in a manner not in conformity with the regulations adopted by the State Board of Control for the presentation and audit of claims. Upon notification from a state agency as described in this section, the Treasurer shall refuse payment of the subject warrant until he or she is otherwise directed by the agency or the Legislature.

SEC. 20. Section 21152 of the Government Code is amended to read:

21152. A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided under this system upon approval of the Director of Personnel Administration or the governing body of a contracting agency, as the case may be, under employment by any state or contracting agency in which he or she previously served while a member of this system, where by reason of actual litigation, or a proceeding before the State Board of Control or the governing body of a contracting agency, as the case may be, or where the state or contracting agency desires to perpetuate testimony in connection with any anticipated litigation involving the state or contracting agency, and adverse interests, the services of the person are or may be necessary in preparing for trial or in testifying as to matters within or based upon his or her knowledge acquired while employed. He or she may be paid a per diem and actual and necessary traveling expenses, but he or she shall not be paid at a greater rate of compensation per diem than the rate ordinarily paid other persons by state agencies or the contracting agency for similar services. However, there shall be deducted from the per diem compensation sums equal to the retirement annuity allocable to the days of actual employment hereunder.

SEC. 21. Section 5101 of the Public Contract Code is amended to read:

5101. (a) A bidder shall not be relieved of the bid unless by consent of the awarding authority nor shall any change be made in the bid because of mistake, but the bidder may bring an action against the public entity in a court of competent jurisdiction in the county in which the bids were opened for the recovery of the amount forfeited, without interest or costs. If the plaintiff fails to recover judgment, the plaintiff shall pay all costs incurred by the public entity in the suit, including a reasonable attorney's fee to be fixed by the court.

(b) If an awarding authority for the state consents to relieve a bidder of a bid because of mistake, the authority shall prepare a report in writing to document the facts establishing the existence of each element required by Section 5103. The report shall be available for inspection as a public record. In the case of the University of California or a California State University, the report shall be filed with the regents and the trustees, respectively, and shall be available as a public record.

SEC. 22. Article 1.5 (commencing with Section 20104) is added to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, to read:

Article 1.5. Resolution of Construction Claims

20104. (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars ($375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

20104.2. For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars ($50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars ($50,000) and less than or equal to three hundred seventy-five thousand dollars ($375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be

tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

20104.4. The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

20104.6. (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided

in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

SEC. 23. Section 6901 of the Revenue and Taxation Code is amended to read:

6901. If the board determines that any amount, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board and shall certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. The excess amount collected or paid shall be credited by the board on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors, if a determination by the board is made in any of the following cases:

(a) Any amount of tax, interest, or penalty was not required to be paid.

(b) Any amount of prepayment of sales tax, interest, or penalty paid pursuant to Article 1.5 (commencing with Section 6480) of Chapter 5 was not required to be paid.

(c) Any amount that is approved as a settlement pursuant to Section 7093.5.

Any overpayment of the use tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefor pursuant to Article 1 (commencing with Section 6201) of Chapter 3 shall be credited or refunded by the state to the purchaser. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 24. Section 6981 of the Revenue and Taxation Code is amended to read:

6981. If any amount has been illegally determined either by the person filing the return or by the board, the board shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 25. Section 7091 of the Revenue and Taxation Code is amended to read:

7091. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board

if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, that shall be determined by the board.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the taxpayer has established that the position of the board staff was not substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing petitions for redetermination and claims for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

SEC. 27. Section 8126 of the Revenue and Taxation Code is amended to read:

8126. If the board determines that any amount not required to be paid under this part has been paid by any person, the board shall set forth that fact in its records and certify the amount collected in excess of the amount legally due and the person from whom it was collected and certify the amount to the Controller for credit or refund. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 28. Section 8191 of the Revenue and Taxation Code is amended to read:

8191. If the board determines that any amount has been illegally determined to be due from any person either by the person filing the return or by the board, the board shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board and the Controller. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 29. Section 9151 of the Revenue and Taxation Code is amended to read:

9151. If the board determines that any amount not required to be paid under this part has been paid by any person, the board shall set

forth that fact in its records and certify the amount paid in excess of the amount legally due and the person by whom the excess was paid to the board or from whom it was collected. The excess amount paid or collected shall be credited on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall either be refunded to the person, or his or her successors, administrators, executors, or assigns, or, if authorized by the board, deducted by the person from any amounts to become due from him or her under this part.

Any overpayment of the tax by a user to a vendor or wholesaler who is required to collect the tax and who gives the user a receipt therefor pursuant to Section 8732 shall be credited or refunded by the state to the user. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 30. Section 9196 of the Revenue and Taxation Code is amended to read:

9196. If any amount has been illegally determined either by the person filing the return or by the board, the board shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 31. Section 11551 of the Revenue and Taxation Code is amended to read:

11551. If the board determines that any amount, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board and shall certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. The excess amount collected or paid shall be credited by the board on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifteen thousand dollars ($15,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 32. Section 11596 of the Revenue and Taxation Code is amended to read:

11596. If any amount for taxes, penalty, and interest has been illegally determined either by the person filing the return or by the

board, the board shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifteen thousand dollars ($15,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 33. Section 12951 of the Revenue and Taxation Code is amended to read:

12951. If any amount has been illegally assessed, the board shall set forth that fact in its records, certify the amount determined to be assessed in excess of the amount legally assessed and the insurer against whom the assessment was made, and authorize the cancellation of the amount upon the records of the Controller and the board. The board shall mail a notice to the insurer of any cancellation authorized. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 34. Section 12977 of the Revenue and Taxation Code is amended to read:

12977. (a) If the board determines that any tax, interest, or penalty has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in its records of the board, certify the amount of the taxes, interest, or penalties collected in excess of what was legally due, and from whom they were collected or by whom paid, and certify the excess to the Controller for credit or refund.

(b) The Controller upon receipt of a certification for credit or refund shall credit the excess on any amounts then due and payable from the insurer under this part and refund the balance.

(c) Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 35. Section 19302 of the Revenue and Taxation Code is amended to read:

19302. If the Franchise Tax Board determines that the taxpayer paid an amount not required to be paid under this part, the Franchise Tax Board shall set forth that fact in its records and may either credit the amount on any amounts then due and payable under this part from the taxpayer by whom the amount was paid or refund the amount or the balance to the taxpayer or the taxpayer's successors, administrators, or executors.

SEC. 36. Section 19306 of the Revenue and Taxation Code is amended to read:

19306. No credit or refund shall be allowed or made after four years from the last day prescribed for filing the return (determined

without regard to any extension of time for filing the return) or after one year from the date of the overpayment, whichever period expires later, unless before the expiration of the period a claim therefor is filed by the taxpayer, or unless before the expiration of the period the Franchise Tax Board allows a credit, makes a refund, or mails a notice of proposed overpayment on a preprinted form prescribed by the Franchise Tax Board.

SEC. 37. Section 19314 of the Revenue and Taxation Code is amended to read:

19314. (a) Notwithstanding any statute of limitations otherwise provided for in this part, any overpayment due a taxpayer for any year, shall be allowed as an offset in computing any deficiency in tax, for the same or any other year, if the overpayment results from any of the following:

(1) A transfer of items of income or deductions or both to or from another year for the same taxpayer.

(2) A transfer of items of income or deductions or both for the same year for a related taxpayer described in Section 19110.

(3) A transfer of items of income or deductions, or both, to or from another taxpayer for the same or different years if the items of income or deductions are transferred between affiliated taxpayers whose tax is determined under Chapter 17 (commencing with Section 25101) of Part 11.

(b) The offset provided under subdivision (a) shall not be allowed after the expiration of seven years from the due date of the return or returns on which the overpayment is determined.

(c) No refund shall be allowed under subdivision (a) unless before the period set forth in Section 19306 a claim therefor is filed by the taxpayer or unless before the expiration of that period the Franchise Tax Board has allowed a credit or made a refund.

SEC. 38. Section 19441 of the Revenue and Taxation Code is amended to read:

19441. (a) The Franchise Tax Board or any person authorized in writing by the Franchise Tax Board is authorized to enter into an agreement in writing with any person (or the person or estate for whom that person acts) in respect of any tax, interest, penalty, or addition to tax levied under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part for any taxable period.

(b) If the agreement is approved by the Franchise Tax Board, itself, within the time as may be stated in the agreement, or later agreed to, the agreement shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the state, and

(2) In any suit, action, or proceeding, the agreement, or any determination, assessment, collection, payment, abatement, refund,

or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

SEC. 38.5. Section 21013 of the Revenue and Taxation Code is amended to read:

21013. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the State Board of Equalization if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the State Board of Equalization.

(2) The State Board of Equalization, in its sole discretion, finds that the action taken by the Franchise Tax Board staff was unreasonable.

(b) To determine whether the Franchise Tax Board staff has been unreasonable, the State Board of Equalization shall consider whether the taxpayer has established that the position of the Franchise Tax Board staff was not substantially justified.

(c) The amount of reimbursed fees and expenses shall be determined by the State Board of Equalization and shall be limited to the following:

(1) Fees and expenses incurred after the date of filing an appeal of a notice of action with respect to a deficiency assessment or jeopardy assessment, or denials of claims for refunds.

(2) If the State Board of Equalization finds that the Franchise Tax Board staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the Franchise Tax Board staff was unreasonable.

(d) Any proposed determination by the State Board of Equalization pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 39. Section 30361 of the Revenue and Taxation Code is amended to read:

30361. If the board determines that any amount not required to be paid under this part has been paid by any person, the board shall set forth that fact in its records and certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. The excess amount collected or paid shall be credited by the board on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 40. Section 30421 of the Revenue and Taxation Code is amended to read:

30421. If any amount has been illegally determined, the board

shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 41. Section 32401 of the Revenue and Taxation Code is amended to read:

32401. If the board determines that any amount of tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board, certify to the State Board of Control the amount collected in excess of what was legally due and the person from whom it was collected or by whom paid, and credit the excess amount collected or paid on any amounts then due from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 42. Section 32440 of the Revenue and Taxation Code is amended to read:

32440. If any amount has been illegally determined, either by the person filing the return or by the board, the board shall certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and shall authorize the cancellation of the amount upon the records of the board. Any proposed cancellation by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 43. Section 38601 of the Revenue and Taxation Code is amended to read:

38601. If the board determines that any amount, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board, certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid, and credit the excess amount collected or paid on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be

available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 44. Section 38631 of the Revenue and Taxation Code is amended to read:

38631. If any amount in excess of fifty thousand dollars ($50,000) has been illegally determined either by the person filing the return or by the board, the board shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 45. Section 40111 of the Revenue and Taxation Code is amended to read:

40111. If the board determines that any amount, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board, certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid, and shall credit the excess amount collected or paid on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

Any overpayment of the surcharge by a consumer to the state shall be credited or refunded by the state to the consumer.

SEC. 46. Section 40121 of the Revenue and Taxation Code is amended to read:

40121. If any amount has been illegally determined either by the person filing the return or by the board, the board shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 47. Section 41100 of the Revenue and Taxation Code is amended to read:

41100. If the board determines that any amount, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in

the records of the board, certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid, and credit the excess amount collected or paid on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

Any overpayment of the surcharge by a service user to a service supplier who is required to collect the surcharge shall be credited or refunded by the state to the service user. However, if the service supplier has paid the amount to the board and establishes to the satisfaction of the board that it has not collected the amount from the service user or has refunded the amount to the service user, the overpayment may be credited or refunded by the state to the service supplier.

SEC. 48. Section 41107 of the Revenue and Taxation Code is amended to read:

41107. If any amount has been illegally determined either by the person filing the return or by the board, the board shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 49. Section 43451 of the Revenue and Taxation Code is amended to read:

43451. If the board determines that any amount of tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board, certify the amount collected in excess of what was legally due and the person from whom it was collected or by whom paid, and credit the excess amount collected or paid on any amounts then due from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 50. Section 43491 of the Revenue and Taxation Code is amended to read:

43491. If any amount has been illegally determined, either by the

person filing the return or by the board, the board shall certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 51. Section 45651 of the Revenue and Taxation Code is amended to read:

45651. If the board determines that any amount of fee, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board, certify the amount collected in excess of what was legally due and the person from whom it was collected or by whom paid, and credit the excess amount collected or paid on any amounts then due from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifteen thousand dollars ($15,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 52. Section 45801 of the Revenue and Taxation Code is amended to read:

45801. If any amount has been illegally determined, either by the person filing the return or by the board, the board shall certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifteen thousand dollars ($15,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 53. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the State Board of Control is able to properly accommodate reductions in board funding by eliminating some of its nonessential functions and streamlining those functions remaining, it is necessary that this act take effect immediately.

CHAPTER 727

An act to amend Sections 39674, 40752, 41512.7, 42300, 42301, 42301.11, 42301.12, 42400, and 42400.4 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 39674 of the Health and Safety Code is amended to read:

39674. (a) Except as otherwise provided in subdivision (b), any person who violates any rule or regulation, emission limitation, or permit condition adopted pursuant to Section 39659 or Article 4 (commencing with Section 39665) or which is implemented and enforced as authorized by subdivision (b) of Section 39658 is strictly liable for a civil penalty not to exceed one thousand dollars ($1,000) for each day in which the violation occurs.

(b) (1) Any person who violates any rule or regulation, emission limitation, permit condition, order fee requirement, filing requirement, duty to allow or carry out inspection or monitoring activities, or duty to allow entry for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (*l*) of Section 112 of the Clean Air Act (42 U.S.C. Section 7412(*l*)) or the regulations adopted pursuant thereto, adopted pursuant to Section 39659 or Article 4 (commencing with Section 39665) or which is implemented and enforced as authorized by subdivision (b) of Section 39658 is strictly liable for a civil penalty not to exceed ten thousand dollars ($10,000) for each day in which the violation occurs.

(2) Where a civil penalty in excess of one thousand dollars ($1,000) for each day of violation is sought, there is no liability under paragraph (1) if the person accused of the violation alleges by affirmative defense and establishes that the violation is caused by an act which was not the result of intentional or negligent conduct. In a district in which a Title V permit program has been fully approved, this paragraph shall not apply to a violation of federally enforceable requirements that occur at a Title V source.

(3) Paragraph (2) shall not apply to a violation of a toxic air contaminant rule, regulation, permit, order, fee requirement, filing requirement, duty to allow or carry out inspection or monitoring activities, or duty to allow entry for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (*l*) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(*l*)), or the regulations adopted pursuant thereto.

SEC. 2. Section 40752 of the Health and Safety Code is amended to read:

40752. The air pollution control officer shall observe and enforce all of the following:

(a) This part and Part 4 (commencing with Section 41500).

(b) All orders, regulations, and rules prescribed by the district board.

(c) All variances and standards which the district hearing board has prescribed.

(d) All permit conditions imposed pursuant to Sections 42301 and 42301.10.

SEC. 3. Section 41512.7 of the Health and Safety Code is amended to read:

41512.7. (a) No district with an annual budget of less than one million dollars ($1,000,000) shall increase any existing fees for authority to construct permits or permits to operate by more than 30 percent in any calendar year, unless required to comply with the minimum fee requirements of Title V.

(b) No district with an annual budget of one million dollars ($1,000,000) or more shall increase any existing fees for authority to construct permits or permits to operate by more than 15 percent in any calendar year.

(c) Notwithstanding subdivision (b), this section shall not apply to the south coast district.

SEC. 4. Section 42300 of the Health and Safety Code is amended to read:

42300. (a) Every district board may establish, by regulation, a permit system that requires, except as otherwise provided in Section 42310, that before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance which may cause the issuance of air contaminants, the person obtain a permit to do so from the air pollution control officer of the district.

(b) The regulations may provide that a permit shall be valid only for a specified period. However, the expiration date of any permit shall be eligible for extension upon completion of the annual review required pursuant to subdivision (e) of Section 42301 and payment of the fees required pursuant to Section 42311, unless the air pollution control officer or the hearing board has initiated action to suspend or revoke the permit pursuant to Section 42304, 42307, or 42309, that action has resulted in a final determination by the officer or the board to suspend or revoke the permit, and all appeals have been exhausted or the time for appeals from that final determination has been exhausted.

(c) The annual extension of a permit's expiration date pursuant to subdivision (b) does not constitute permit issuance, renewal, reopening, amendment, or any other action subject to the requirements specified in Title V.

SEC. 5. Section 42301 of the Health and Safety Code is amended to read:

42301. A permit system established pursuant to Section 42300 shall do all of the following:

(a) Ensure that the article, machine, equipment, or contrivance for which the permit was issued does not prevent or interfere with the attainment or maintenance of any applicable air quality standard.

(b) Prohibit the issuance of a permit unless the air pollution control officer is satisfied, on the basis of criteria adopted by the district board, that the article, machine, equipment, or contrivance will comply with all of the following:

(1) All applicable orders, rules, and regulations of the district and of the state board.

(2) All applicable provisions of this division.

(c) Prohibit the issuance of a permit to a Title V source if the Administrator of the Environmental Protection Agency objects to its issuance in a timely manner as provided in Title V. This subdivision is not intended to provide any authority to the Environmental Protection Agency to object to the issuance of a permit other than that authority expressly granted by Title V.

(d) Provide that the air pollution control officer may issue to a Title V source a permit to operate or use if the owner or operator of the Title V source presents a variance exempting the owner or operator from Section 41701, any rule or regulation of the district, or any permit condition imposed pursuant to this section, or presents an abatement order that has the effect of a variance and that meets all of the requirements of this part pertaining to variances, and the requirements for the issuance of permits to operate are otherwise satisfied. The issuance of any variance or abatement order is a matter of state law and procedure only and does not amend a Title V permit in any way. Those terms and conditions of any variance or abatement order that prescribe a compliance schedule may be incorporated into the permit consistent with Title V and this division.

(e) Require, upon annual renewal, that each permit be reviewed to determine that the permit conditions are adequate to ensure compliance with, and the enforceability of, district rules and regulations applicable to the article, machine, equipment, or contrivance for which the permit was issued which were in effect at the time the permit was issued or modified, or which have subsequently been adopted and made retroactively applicable to an existing article, machine, equipment, or contrivance, by the district board and, if the permit conditions are not consistent, require that the permit be revised to specify the permit conditions in accordance with all applicable rules and regulations.

(f) Provide for the reissuance or transfer of a permit to a new owner or operator of an article, machine, equipment, or contrivance. An application for transfer of ownership only, or change in operator only, of any article, machine, equipment, or contrivance which had a valid permit to operate within the two-year period immediately preceding the application is a temporary permit to operate. Issuance of the final permit to operate shall be conditional upon a determination by the district that the criteria specified in

subdivisions (b) and (e) are met, if the permit was not surrendered as a condition to receiving emission reduction credits pursuant to banking or permitting rules of the district. However, under no circumstances shall the criteria specify that a change of ownership or operator alone is a basis for requiring more stringent emission controls or operating conditions than would otherwise apply to the article, machine, equipment, or contrivance.

SEC. 6. Section 42301.11 of the Health and Safety Code is amended to read:

42301.11. It is the intent of the Legislature that, in addition to their responsibilities and obligations under state and federal law, in implementing Title V, districts do all of the following, to the extent feasible:

(a) Develop, in recognition that districts are obligated to issue one-third of the Title V permits within one year of the Title V program's approval by the Environmental Protection Agency, and in recognition that sources are allowed one year to submit a Title V permit application, an equitable program for ensuring that all sources receive as much time as feasible to develop and submit permit applications. In developing the program the districts shall recognize the complexity and size of the facilities, the number and similarity of facilities within each industry category, the level of effort required to develop the permit application, and the resources available to complete the application. The districts should also consider potential incentive programs to promote voluntary early permit application submissions.

(b) Consider the advantages and disadvantages of including the permit shield authorized by subsection (f) of Section 70.6 of Title 40 of the Code of Federal Regulations in all Title V permits to clarify the federal compliance responsibilities of Title V sources.

(c) Consistent with state and federal regulations, allow the use of emission monitoring alternatives, when available and having the accuracy required to ensure enforcement and compliance, in lieu of the use of continuous emission monitors.

(d) Encourage the issuance of Title V permits for five-year terms.

SEC. 7. Section 42301.12 of the Health and Safety Code is amended to read:

42301.12. (a) Any district permit system or permit provision established by a district board to meet the requirements of Title V shall, consistent with federal law, minimize the regulatory burden on Title V sources and the district and shall meet all of the following criteria:

(1) Apply only to Title V sources, as defined in Section 39053.5.

(2) Issue permits pursuant to Title V only after the Environmental Protection Agency has approved the district's Title V permit program.

(3) Identify in the permit, to the greatest extent feasible, permit terms and conditions which are federally enforceable and those which are not federally enforceable, so that requirements imposed

only by the state are not made federally enforceable solely as a result of being included as part of a Title V permit. A district may make that identification by either of the following means:

(A) Identifying in the permit the terms and conditions which are federally enforceable because they are imposed pursuant to a federal requirement.

(B) Identifying in the permit the terms and conditions which are imposed pursuant to state law or district rules and are not federally enforceable. Districts may further identify those terms and conditions of the permit which are not federally enforceable, but which have been included in the permit to enforce district rules adopted by the district to meet federal requirements.

(4) Utilize, to the extent reasonably feasible, general permits and similar methods to reduce source and district permitting burdens for Title V sources.

(5) Establish clear and simple application completeness criteria.

(6) To the extent feasible, minimize the burden of federally mandated paperwork such as recordkeeping and reporting documents.

(7) Allow sources maximum flexibility in selecting cost-effective, reliable, and representative monitoring methods consistent with applicable state and federal requirements.

(8) If a permit is required to be reopened to comply with Title V requirements, base the reopening upon the federal criteria for reopening and limit the reopening to only the federal component of the Title V permit. This paragraph is not intended to limit in any way the authority under state law to reopen permits.

(9) Authorize administrative permit amendments and minor permit modifications as required by federal law.

(10) Provide that, unless the district determines that a Title V application is not complete within 60 days of receipt of the application, the application shall be deemed to be complete.

(11) Authorize, to the extent consistent with existing state law, mandatory operational flexibility provisions required pursuant to Part 70 (commencing with Section 70.1) of Title 40 of the Code of Federal Regulations, and consider optional operational flexibility provisions established pursuant to Part 70 (commencing with Section 70.1) of Title 40 of the Code of Federal Regulations. Nothing in this paragraph is intended to affect whatsoever any pending litigation.

(12) Make every reasonable effort, in partnership with Title V sources and the state board, to evaluate and respond to the substance of any objection to a proposed permit and to obtain expeditious approval of Title V permits submitted to the Environmental Protection Agency.

SEC. 8. Section 42400 of the Health and Safety Code is amended to read:

42400. (a) Except as otherwise provided in Section 42400.1, 42400.2, 42400.3, or 42400.4, any person who violates this part, or any rule, regulation, permit, or order of the state board or of a district,

including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is guilty of a misdemeanor and is subject to a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or both.

(b) If a violation under subdivision (a) with regard to the failure to operate a vapor recovery system on a gasoline cargo tank is directly caused by the actions of an employee under the supervision of, or of any independent contractor working for, any person subject to this part, the employee or independent contractor, as the case may be, causing the violation is guilty of a misdemeanor and is punishable as provided in subdivision (a). That liability shall not extend to the person employing the employee or retaining the independent contractor, unless that person is separately guilty of an action that violates this part.

(c) (1) Any person who knowingly violates any rule, regulation, permit, order, fee requirement, or filing requirement of the state board or of a district, including a district hearing board, that is adopted for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (*l*) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(*l*)), or the regulations adopted pursuant thereto, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars ($10,000) or imprisonment in the county jail for not more than six months, or both.

(2) Any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required by a rule or regulation adopted or permit issued for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (*l*) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(*l*)), or the regulations adopted pursuant thereto, or who knowingly renders inaccurate any monitoring device required by that toxic air contaminant rule, regulation, or permit is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars ($10,000) or imprisonment in the county jail for not more than six months, or both.

(3) Paragraphs (1) and (2) apply only to violations that are not otherwise subject to a fine of ten thousand dollars ($10,000) or more pursuant to Section 42400.1, 42400.2, or 42400.3.

(d) The recovery of civil penalties pursuant to Section 42402, 42402.1, 42402.2, or 42402.3 precludes prosecution pursuant to this section for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds

requiring the dismissal of any civil action brought pursuant to this article for the same offense.

(e) Each day during any portion of which a violation of subdivision (a) or (c) occurs is a separate offense.

SEC. 9. Section 42400.4 of the Health and Safety Code is amended to read:

42400.4. (a) In any district where a Title V permit program has been fully approved by the Environmental Protection Agency, any person who knowingly violates any federally enforceable permit condition or any fee or filing requirement applicable to a Title V source is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars ($10,000).

(b) In any district in which a Title V permit program has been fully approved by the Environmental Protection Agency, any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required of a Title V source of a federally enforceable permit requirement, or who knowingly renders inaccurate any monitoring device or method required of a Title V source, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars ($10,000).

(c) The recovery of civil penalties pursuant to Section 42402, 40402.1, 42402.2, or 40402.3 precludes prosecution pursuant to this section for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

(d) Each day during any portion of which a violation of subdivision (a) or (b) occurs is a separate offense.

(e) This section shall not become operative in a district until the Environmental Protection Agency fully approves that district's Title V permit program.

(f) This section applies only to violations described in subdivisions (a) and (b) that are not otherwise subject to a fine of ten thousand dollars ($10,000) or more pursuant to Section 42400.1, 42400.2, or 42400.3.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 728

An act to amend Section 6 of, and to add Section 4.5 to, Chapter 74 of the Statutes of 1978, relating to tide and submerged lands in the City of Newport Beach.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 4.5 is added to Chapter 74 of the Statutes of 1978, to read:

Sec. 4.5. (a) The Legislature hereby finds and declares all of the following:

(1) In Section 1 of this act, the Legislature granted certain tide and submerged lands in trust to the City of Newport Beach upon express conditions and for certain public trust uses and purposes, but primarily for the promotion and accommodation of commerce, fishing, and navigation.

(2) Portions of those tide and submerged lands were filled and reclaimed as a result of the implementation in the 1920's of a plan of improvement, including the development of lower Newport Bay as a harbor to promote and accommodate commerce, fishing, recreational boating, and navigation. In addition to those filled tide and submerged lands, an additional parcel, as described in Section 6 of this act, as amended by the act adding this section, hereafter designated Parcel D, has been filled and reclaimed as part of the public project of developing lower Newport Bay as a harbor.

(3) Prior to a judicial determination in 1952 that Parcel D and certain adjoining lands were state tidelands and submerged lands granted to the city pursuant to Chapter 70 of the Statutes of 1927, the legal character of the property was subject to question. In 1948, the city leased Parcel D and adjoining property to a private entity which constructed a private club on the adjoining property and a residential apartment complex of 142 units on Parcel D. The term of that lease was extended in 1986, and the lease requires that the use of Parcel D conform to public trust purposes as of December 31, 1998, in the absence of an act of the Legislature, a judicial determination, or an agreement with the State Lands Commission.

(4) Since 1985, the residential apartment complex on Parcel D has produced substantial income, all of which the city has used to directly promote and support public use of tide and submerged lands held in trust by the city by providing services to those public trust lands, including lifeguards, beach cleanup, police, and fire protection, and by constructing facilities which improve the quality and extent of public use of, and access to, tide and submerged lands.

(5) Private residential use of tide and submerged lands, whether filled or unfilled, is in conflict with the common law public trust and

the intent of the Legislature in enacting this act.

(6) Many members of the public have made the apartment complex their residence for many years and have come to look upon the apartments as their permanent home despite the nature of their tenancy.

(7) Parcel D, a relatively small portion of the public trust lands in Newport Bay, has been filled and reclaimed so that it is no longer submerged or below the mean high tide line, is not in its present state usable for public trust uses and purposes, and, given the large amount of public trust lands that the City of Newport Beach makes available to the public, Parcel D may be more valuable as a generator of revenue devoted to the support of public trust purposes than as a parcel used by the public for trust purposes.

(8) Public trust land adjacent to Parcel D has been developed as a private club with extremely limited public access. The current lessee of the private club and Parcel D has proposed, and the city has approved, a redevelopment plan which, if implemented, will allow full public access to the majority of the site currently occupied by the private club and will generate substantially more tideland revenue from existing uses. However, the current lessee will be required to pledge revenue from the apartment complex on Parcel D to secure the financing necessary to implement the redevelopment plan, and any uncertainty regarding the permissible use of Parcel D could impede or prevent redevelopment and postpone, for more than 17 years, the public's right of access to the property.

(b) In view of the potential hardships resulting from the removal of the current tenants on or before December 31, 1998, the economic benefit to the trust from the revenue generated by the continuing use of Parcel D as an apartment complex, the benefits to the public if revenue generated by Parcel D is used to secure the financing necessary to implement the redevelopment plan for the adjoining property, which will dramatically improve public access to tide and submerged lands, the availability of current public facilities and the potential needs for expanded facilities for public trust uses and purposes and in recognition of the facts set forth in paragraphs (2), (3), (4), (5), (6), and (7) of subdivision (a), and in view of the amount of public trust land remaining in Newport Bay that is suitable for public trust use, the current nonconforming residential use of Parcel D may continue for the duration of its useful life, until the structure is removed, until the current or new lease expires, or until five years after expiration of the financing secured by Parcel D revenues, whichever occurs first, but in no event later than December 31, 2044, subject to the requirement that all revenue be devoted to public trust uses and purposes as provided in subdivision (f).

(c) If the city determines that land use, economic conditions, and public needs associated with Parcel D will extend beyond the term of the present lease, the city shall apply to the State Lands Commission for a determination by the commission that the

continuation of that nonconforming use for an additional period is in the best interest of the public and in furtherance of public trust purposes. If the commission makes that finding, Parcel D may be leased for residential purposes for an additional period, but in no event beyond December 31, 2044.

(d) The consideration received by the city for any future lease or amendment to the current lease which includes Parcel D shall be the fair market rental value of the real property and improvements, subject to any presently existing contractual obligations during the period the property is used for private purposes.

(e) The form of any future lease or amendment of the current lease involving Parcel D, and the consideration to be received by the city, shall be subject to approval by the State Lands Commission.

(f) (1) Effective July 1, 1995, all money received by the city from the existing lease or any future lease that includes Parcel D shall be deposited in the following trust funds:

(A) Ninety-five percent shall be deposited in a city tidelands trust fund with the revenue available only for purposes consistent with the promotion of public trust uses, including public access, over the remaining tide and submerged lands granted to the city.

(B) Five percent shall be deposited in the Land Bank Fund to be available, without regard to fiscal years, pursuant to subdivision (c) of Section 8625 of the Public Resources Code, for expenditure by the State Lands Commission for purposes of providing necessary state review of management of public trust property as provided by Sections 6301 and 6306 of the Public Resources Code.

(2) Five years after the effective date of any new lease or amendment to the current lease, the revenue percentages shall be modified to provide for the deposit of 90 percent in the city tidelands trust fund as specified in subparagraph (A) of paragraph (1) and 10 percent in the Land Bank Fund as specified in subparagraph (B) of paragraph (1).

(g) Nothing in this act is intended to limit the application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code) or the jurisdiction of the California Coastal Commission.

SEC. 2. Section 6 of Chapter 74 of the Statutes of 1978 is amended to read:

Sec. 6. The parcels of real property referred to in this act are described as follows:

PARCEL A

Beginning at Station No. 8 in the Line of Mean High Tide per judgment rendered in Case No. 20436, Superior Court of California, County of Orange, recorded in Book 651, page 72 of Deeds, records of said Orange County, said Station No. 8 being at the easterly terminus of that certain course in said Line of Mean High Tide shown as "North 71° 54′ 00″ West, 1573.34 Feet" on a map of Tract No. 4003 recorded in Book 188, pages 13 through 19 of Miscellaneous Maps, records of said Orange County, said beginning being a 1½″ iron pipe

as shown on said map of Tract No. 4003; thence along said Line of Mean High Tide, South 85° 40' 37" East, 606.01 feet to a point in a line parallel with and 100.00 feet easterly from the easterly line of Lot G as shown on a map filed in Book 9, pages 42 and 43 of Record of Surveys, records of said Orange County; thence along said parallel line South 160.46 feet to a point in the Ordinary High Tide Line per judgment rendered in Case No. 24026, Superior Court of California, County of Orange, recorded in Book 199, page 275 of Official Records of said Orange County, said point being the True Point of Beginning of this description; thence along said Ordinary High Tide Line the following courses: North 82° 30' 00" West, 297.66 feet to an angle point therein; thence South 84° 00' 00" West, 160.00 feet; thence South 57° 00' 00" West, 100.00 feet; thence South 32° 52' 00" East, 243.24 feet to a line that is parallel with and distant 28.00 feet northerly, measured at right angles, from the U.S. Bulkhead Line, as shown on U.S. Engineer's Map of Harbor Lines of Newport Bay, dated March 20, 1936, and approved April 28, 1936; thence leaving said Ordinary High Tide Line and along said parallel line East, 148.00 feet to the southeasterly corner of Lot 19 as shown on a map filed in Book 9, pages 42 and 43 of Record of Surveys, records of said Orange County; thence along the easterly line of said Lot 19 North 100.00 feet; thence East 40.00 feet; thence South 100.00 feet; thence East 198.10 feet to a line parallel with and distant 20.00 feet westerly, measured at right angles from that certain course and southerly prolongation thereof, recited as, "South, 160.46 feet"; thence along said parallel line North 132.00 feet; thence East 20.00 feet; thence North 104.64 feet to the True Point of Beginning of this description.

Containing 2,694 acres, more or less.

PARCEL B

Beginning at U.S. Bulkhead Station No. 200 as shown on map entitled "Harbor Lines, Newport Bay Harbor, California," Sheet 1 of 2 of File Map No. 958, dated March 20, 1936, and approved April 28, 1936, and on file in the office of the U.S. Engineer, Los Angeles, California, also being on the Ordinary High Tide Line per judgment rendered in Case No. 24026, Superior Court of California, County of Orange, recorded in Book 199, page 275 of Official Records of said Orange County, said beginning being a 2" iron pipe as shown on a map of Tract 3867, recorded in Book 301, pages 40 through 46 of Miscellaneous Maps, records of said Orange County; thence along said Ordinary High Tide Line, as described in said Book 199, page 275, of Official Records, North 39° 48' 00" West, 36.44 feet to a point in a line that is parallel with and distant 28.00 feet northerly, measured at right angles, from the U.S. Bulkhead Line as shown on said U.S. Engineer's Map, said point also being the True Point of Beginning of this description; thence continuing along said Ordinary High Tide Line, North 39° 48' 00" West, 432.17 feet; thence leaving said Ordinary High Tide Line, South 56° 56' 29" West, 32.24 feet to a point in a nontangent curve, concave northwesterly and having a

radius of 171.63 feet, a radial line of said curve from said point bears North 67° 48' 00" West; thence southerly and southwesterly along said curve 76.60 feet through a central angle of 25° 34' 20" to a point of nontangency with a line that is parallel with and distant 105.32 feet southwesterly, measured at right angles, from that certain course recited above as "North 39° 48' 00" West, 432.17 feet"; thence along said parallel line, South 30° 48' 00" East, 328.27 feet to said line described above as being parallel with and distant 28.00 feet northerly, measured at right angles, from the U.S. Bulkhead Line as shown on said U.S. Engineer's Map; thence along said parallel line, East, 137.09 feet to the True Point of Beginning of this description.

Containing 0.925 acre, more or less.

PARCEL C

Beginning at U.S. Bulkhead Station No. 200 as shown on map entitled "Harbor Lines, Newport Bay Harbor, California," Sheet 1 of 2 of File Map No. 958, dated March 20, 1936, and approved April 28, 1936, and on file in the office of the U.S. Engineer, Los Angeles, California, also being on the Ordinary High Tide Line per judgment rendered on Case No. 24026, Superior Court of California, County of Orange, recorded in Book 199, page 275 of Official Records of said Orange County, said beginning being a 2" iron pipe as shown on a map of Tract No. 3867, recorded in Book 301, pages 40 through 46 of Miscellaneous Maps, records of said Orange County; thence along said Ordinary High Tide Line as described in said Book 199, page 275 of Official Records, North 39° 48' 00" West, 539.22 feet to the True Point of Beginning of this description; thence continuing North 39° 48' 00" West, 146.59 feet; thence South 23° 57' 30" West along the southwesterly prolongation of that certain course described in said Case No. 24026 as "North 23° 57' 30" East, 138.90 feet" a distance of 126.34 feet to a line that is parallel with and distant 113.32 feet southwesterly, measured at right angles, from that certain course recited above as "North 39° 48' 00" West, 146.59 feet"; thence along said parallel line, South 39° 48' 00" East, 137.64 feet to a point in a nontangent curve, concave northwesterly and having a radius of 131.63 feet, said curve being concentric with and 40.00 feet northwesterly, measured radially, from that certain curve described in Parcel B above as having a radius of 171.63 feet, a radial line of said curve from said point bears North 39° 28' 52" West; thence northeasterly and northerly along said curve 74.56 feet through a central angle of 32° 27' 23"; thence tangent to said curve, North 18° 03' 45" East, 50.27 feet to the True Point of Beginning of this description.

Containing 0.387 acre, more or less.

PARCEL D

That portion of Lot 171, Block 54 of Irvine's Subdivision in the City of Newport Beach, County of Orange, State of California, as shown on a map filed in Book 1, Page 88 of Miscellaneous Record Maps in the Office of the County Recorder of the county described as follows:

Beginning at a point on the U.S. Bulkhead line extending from U.S.

Bulkhead Station No. 129 to U.S. Bulkhead Station No. 130 as that Bulkhead line and Bulkhead stations are laid out and shown on a map of Newport Bay, California, showing harbor lines approved by the War Department, January 18, 1917, that point being distant South 61° 01′ 07″ East, measured along the Bulkhead line, 700.00 feet from the point of intersection of the Bulkhead line with the southwesterly prolongation of the centerline of Irvine Avenue as shown on a Map of First Addition To Newport Heights recorded in Book 4, Page 94 of Miscellaneous Maps in the Office of the County Recorder, that point of intersection being the most southerly corner of Lot H of Tract No. 919 as shown on a map recorded in Book 29, Pages 31 through 34 of Miscellaneous Maps in the Office of the County Recorder; thence North 28° 58′ 53″ East 154.19 feet to a point in the southwesterly line of the 100 foot right-of-way of California State Highway ORA-60-B, that point being on a nontangent curve in the right-of-way line concave northeasterly and having a radius of 2050.00 feet, that point being on a line radial to Engineer's Station 6+56.15 in the centerline of that highway, the radial line bears North 19° 37′ 57″ East; thence along that southwesterly line through the following courses: along the curve southeasterly 142.79 feet through a central angle of 3° 59′ 27″; thence tangent from that curve South 74° 21′ 30″ East 662.08 feet; thence leaving the southwesterly line of that 100 foot right-of-way, South 28° 58′ 53″ West 195.71 feet; thence South 27° 00′ 00″ East 16.66 feet; thence Sough 28° 58′ 53″ West 130.00 feet to a point on that Bulkhead line, the point being distant South 61° 01′ 07″ East 798.00 feet from the Point of Beginning; thence along the Bulkhead line North 61° 01′ 07″ West 798.00 feet to the point of beginning.

CHAPTER 729

An act to amend Section 798.73 of the Civil Code, relating to mobilehome parks.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 798.73 of the Civil Code is amended to read:

798.73. The management shall not require the removal of a mobilehome from the park in the event of its sale to a third party during the term of the homeowner's rental agreement. However, in the event of a sale to a third party, in order to upgrade the quality of the park, the management may require that a mobilehome be removed from the park where:

(a) It is not a "mobilehome" within the meaning of Section 798.3.

(b) It is more than 20 years old, or more than 25 years old if

manufactured after September 15, 1971, and is 20 feet wide or more, and the mobilehome does not comply with the health and safety standards provided in Sections 18550, 18552, and 18605 of the Health and Safety Code and the regulations established thereunder, as determined following an inspection by the appropriate enforcement agency, as defined in Section 18207 of the Health and Safety Code.

(c) The mobilehome is more than 17 years old, or more than 25 years old if manufactured after September 15, 1971, and is less than 20 feet wide, and the mobilehome does not comply with the construction and safety standards under Sections 18550, 18552, and 18605 of the Health and Safety Code and the regulations established thereunder, as determined following an inspection by the appropriate enforcement agency, as defined in Section 18207 of the Health and Safety Code.

(d) It is in a significantly rundown condition or in disrepair, as determined by the general condition of the mobilehome and its acceptability to the health and safety of the occupants and to the public, exclusive of its age. The management shall use reasonable discretion in determining the general condition of the mobilehome and its accessory structures. The management shall bear the burden of demonstrating that the mobilehome is in a significantly rundown condition or in disrepair. The management shall not require repairs and improvements to the park space or property owned by the management, except for damage caused by the homeowner.

CHAPTER 730

An act to add Article 18.5 (commencing with Section 743) to Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Article 18.5 (commencing with Section 743) is added to Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, to read:

Article 18.5. Repeat Offender Prevention Project

743. Contingent upon the appropriation of funds therefor, there is hereby established a three-year demonstration project which shall be known as the "Repeat Offender Prevention Project." This project shall operate in three counties or regions, each of which shall design, establish, implement, and evaluate a model program to meet the needs of a chronic juvenile offender population identified in

exploratory studies conducted in Orange County between 1989 and 1993 by the research staff of the Orange County Probation Department and designated as the "8 percent" population.

744. (a) The Repeat Offender Prevention Project shall be administered by the Department of the Youth Authority and each program shall be under the onsite administration of the chief probation officer in the county selected for participation in the project or under a consortium of chief probation officers representing each region selected for program participation.

(b) Pursuant to this article, a chief probation officer or the regional consortium, with the approval of the appropriate board or boards of supervisors, may apply to the Department of the Youth Authority for funding to implement a program meeting the criteria specified in subdivision (b) of Section 745. The goal of each program shall be to develop and demonstrate intervention strategies which will end each participating minor's escalating pattern of criminal and antisocial behavior, a pattern that leads to chronic delinquency and, potentially, to adult criminal careers. These strategies shall be provided within the parameters of community protection and offender accountability. Application for program funding shall be made in accordance with written guidelines established by the Department of the Youth Authority in consultation with chief probation officers throughout the state.

745. (a) Of the three counties or regions selected for project participation, one county or region shall be from northern California, one from the bay or central area of California, and one shall be another county located in southern California. Of the counties selected for participation, one county shall contain a population of 1,000,000 or more, one county shall contain a population of at least 100,000, but less than 1,000,000, and one county shall contain a population of less than 100,000.

(b) The Department of the Youth Authority shall establish goals and deadlines against which the success or failure of the program may be measured. The department shall also develop selection criteria and funding schedules for participating counties or regions which shall take into consideration, but not be limited to, all of the following:

(1) Size of the eligible target population as defined in Section 746.

(2) Demonstrated ability to administer the program.

(3) Identification of service delivery area.

(4) Demonstrated ability to provide or develop the key intervention strategies described in Section 748 to the eligible target population and their families.

(5) A formal research component utilizing an experimental research design and random assignment to the program.

746. A minor shall be selected for participation in a program established pursuant to this article based upon the following factors:

(a) The minor is 15 years of age or younger, has been declared a ward of the juvenile court for the first time, and is to be supervised

by a probation department selected for participation in this project.

(b) The minor has been evaluated and at least two of the following factors, which place the minor at a significantly greater risk of becoming a chronic juvenile or adult offender, have been identified:

(1) School behavior and performance. This shall include at least one of the following: attendance problems, behavior problems, or poor grades.

(2) Family problems. These shall include at least one of the following: poor parental supervision or control; domestic violence; trauma; recent financial problems; or marital or family discord.

(3) Substance abuse. This shall include the abuse of alcohol or drugs by the minor, other than experimentation.

(4) Delinquent behavior. This shall include at least one of the following: a pattern of stealing; running away from home; or gang membership or association.

747. The Department of the Youth Authority shall adopt written minimum standards for project implementation, operation, and evaluation which shall include a written commitment by a county or region to the following objectives:

(a) Teamwork on the part of all treatment and intervention agents involved in the project including the family, the professionals, and any community volunteers.

(b) Empowerment of the family to recognize and, ultimately, to solve the problems related to their minor's criminal behavior and their involvement as an integral part of the treatment team and process.

(c) Creation of a multiagency, multidisciplinary team so that the program can effectively draw on the professional knowledge, skill, and experience of many treatment disciplines in areas including, but not limited to, the following: education; job preparation and search; job skills and vocational training; life skills; psychological counseling; drug and alcohol treatment; health care; parenting skills; community service opportunities; building self-esteem and self-confidence; mentoring programs; restitution programs; gang intervention; recreational, social, and cultural activities; and transportation and child care as needed.

748. Each county or region shall, in implementing their respective programs, provide the following key intervention strategies to ensure the following:

(a) Adequate levels of supervision, structure, and support to minors and their families both during and after the intervention and treatment process, in order to accomplish all of the following:

(1) Ensure protection of the community, the minor, and his or her family.

(2) Facilitate the development of new patterns of thinking and behavior.

(3) Eliminate any obvious stumbling blocks to the family's progress.

(b) Accountability on the part of the minor for his or her actions

and assistance to the minor in developing a greater awareness and sensitivity to the impact of his or her actions on both people and situations.

(c) Assistance to families in their efforts to ensure that minors are attending school regularly.

(d) Assistance to the minor in developing strategies for attaining and reinforcing educational success.

(e) Promotion and development of positive social values, behavior, and relationships by providing opportunities for the minor to directly help people; to improve his or her community; to participate in positive leisure-time activities specially chosen to match his or her individual interests, skills, and abilities; and to have greater access and exposure to positive adult and juvenile role models.

(f) Promotion and development of individualized intervention strategies which shall include, but not be limited to, the following:

(1) Delivery of services in close proximity to the minor's or the minor's family's home.

(2) Community case advocates to assist in building bridges of trust, communication, and understanding between the minor, the family, and all treatment and intervention agents.

(g) Provision of a continuum of care with strong followup services that continue to be available to the minor and family as long as needed, not just on a crisis basis.

749. (a) The Department of the Youth Authority shall be responsible for monitoring project implementation in accordance with an annual program plan submitted by the participating counties or regions. Written progress reports and evaluation reports shall be required of participating counties or regions pursuant to a schedule and guidelines developed by the Department of the Youth Authority.

(b) The success of each funded project will be determined, at a minimum, by comparing a control group, consisting of juvenile offenders who were not selected for participation in the project, to an experimental group, consisting of juvenile offenders who have participated in the project. Juveniles in each group will be evaluated at 6-, 12-, 18-, and 24-month intervals, according to the following criteria:

(1) The number of subsequent petitions to declare the minor a ward of the juvenile court, pursuant to Section 602, and the subject matter and disposition of each of those petitions.

(2) The number of days served in any local or state correctional facilities.

(3) The number of days of school attendance during the current or most recent semester.

(4) The minor's grade point average for the most recently completed school semester.

(c) The Department of the Youth Authority, based on reports provided pursuant to subdivision (a), shall report upon request to

the Legislature on the effectiveness of these programs in achieving the project and program goals described in this article.

(d) The Department of the Youth Authority shall determine county or regional eligibility for funding and, from money appropriated therefor, the department shall allocate and award funds to those counties or regions applying and eligible therefor and selected for project participation.

(e) The Repeat Offender Prevention Project shall be implemented within six months of the appropriation of funds therefor and shall terminate at the end of three years from that appropriation.

(f) Five percent of the funds allocated each fiscal year for the Repeat Offender Prevention Project shall be set aside for the administrative expenses of the Department of the Youth Authority.

CHAPTER 731

An act to amend Section 51018 of the Government Code, and to add Section 3106.5 to the Public Resources Code, relating to pipelines and oil, and making an appropriation therefor.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 51018 of the Government Code is amended to read:

51018. (a) Every rupture, explosion, or fire involving a pipeline, including a pipeline system otherwise exempted by subdivision (a) of Section 51010.5, and including a pipeline undergoing testing, shall be immediately reported by the pipeline operator to the fire department having fire suppression responsibilities and to the Office of Emergency Services. In addition, the pipeline operator shall within 30 days of the rupture, explosion, or fire file a report with the State Fire Marshal containing all the information that the State Fire Marshal may reasonably require to prepare the report required pursuant to subdivision (d).

(b) The fire department having fire suppression responsibilities shall immediately notify the State Fire Marshal of the incident, who shall immediately dispatch his or her employees to the scene. The State Fire Marshal or his or her employees, upon arrival, shall provide technical expertise and advise the operator and all public agencies on activities needed to mitigate the hazard.

For purposes of this subdivision, the Legislature does not intend to hinder or disrupt the workings of the "incident command system," but does intend to establish a recognized element of expertise and direction for the incident command to consult and acknowledge as

an authority on the subject of pipeline incident mitigation. Furthermore, it is expected that the State Fire Marshal will recognize the expertise of the pipeline operator and any other emergency agency personnel who may be familiar with the particular location of the incident and respect their knowledgeable input regarding the mitigation of the incident.

(c) For purposes of this section, "rupture" includes every unintentional liquid leak, including any leak that occurs during hydrostatic testing, except that a crude oil leak of less than five barrels from a pipeline or flow line in a rural area, or any crude oil or petroleum product leak in any in-plant piping system of less than five barrels, when no fire, explosion, or bodily injury results or no waterway is contaminated thereby, does not constitute a rupture for purposes of the reporting requirements of subdivision (a).

(d) The State Fire Marshal shall, every fifth year commencing in 1999, issue a report identifying pipeline leak incident rate trends, reviewing current regulatory effectiveness with regard to pipeline safety, and recommending any necessary changes to the Legislature. This report shall include all of the following: total length of regulated pipelines, total length of regulated piggable pipeline, total number of line sections, average length of each section, number of leaks during study period, average spill size, average damage per incident, average age of leak pipe, average diameter of leak pipe, injuries during study period, cause of the leak or spill, fatalities during study period, and other information as deemed appropriate by the State Fire Marshal.

(e) This section does not preempt any other applicable federal or state reporting requirement.

SEC. 1.5. Section 51018 of the Government Code is amended to read:

51018. (a) Every rupture, explosion, or fire involving a pipeline, including a pipeline system otherwise exempted by subdivision (a) of Section 51010.5, and including a pipeline undergoing testing, shall be immediately reported by the pipeline operator to the fire department having fire suppression responsibilities and to the Office of Emergency Services. In addition, the pipeline operator shall within 30 days of the rupture, explosion, or fire file a report with the State Fire Marshal containing all the information that the State Fire Marshal may reasonably require to prepare the report required pursuant to subdivision (d).

(b) The Office of Emergency Services shall immediately notify the State Fire Marshal of the incident, who shall immediately dispatch his or her employees to the scene. The State Fire Marshal or his or her employees, upon arrival, shall provide technical expertise and advise the operator and all public agencies on activities needed to mitigate the hazard.

For purposes of this subdivision, the Legislature does not intend to hinder or disrupt the workings of the "incident command system," but does intend to establish a recognized element of expertise and

direction for the incident command to consult and acknowledge as an authority on the subject of pipeline incident mitigation. Furthermore, it is expected that the State Fire Marshal will recognize the expertise of the pipeline operator and any other emergency agency personnel who may be familiar with the particular location of the incident and respect their knowledgeable input regarding the mitigation of the incident.

(c) For purposes of this section, "rupture" includes every unintentional liquid leak, including any leak that occurs during hydrostatic testing, except that a crude oil leak of less than five barrels from a pipeline or flow line in a rural area, or any crude oil or petroleum product leak in any in-plant piping system of less than five barrels, when no fire, explosion, or bodily injury results or no waterway is contaminated thereby, does not constitute a rupture for purposes of the reporting requirements of subdivision (a).

(d) The State Fire Marshal shall, every fifth year commencing in 1999, issue a report identifying pipeline leak incident rate trends, reviewing current regulatory effectiveness with regard to pipeline safety, and recommending any necessary changes to the Legislature. This report shall include all of the following: total length of regulated pipelines, total length of regulated piggable pipeline, total number of line sections, average length of each section, number of leaks during study period, average spill size, average damage per incident, average age of leak pipe, average diameter of leak pipe, injuries during study period, cause of the leak or spill, fatalities during study period, and other information as deemed appropriate by the State Fire Marshal.

(e) This section does not preempt any other applicable federal or state reporting requirement.

(f) Except as otherwise provided in this section and Section 8589.7, a notification made pursuant to this section shall satisfy any notification requirement contained in any permit issued by a permitting agency.

SEC. 2. Section 3106.5 is added to the Public Resources Code, to read:

3106.5. Acting with the approval of the director, the supervisor may annually expend, from the amount appropriated to the division, up to ten thousand dollars ($10,000) to support activities at the West Kern Oil Museum.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 51018 of the Government Code proposed by both this bill and AB 3404. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 51018 of the Government Code, and (3) this bill is enacted after AB 3404, in which case Section 1 of this bill shall not become operative.

CHAPTER 732

An act to amend Section 11735 of, and to add Section 11732.5 to, the Insurance Code, relating to workers' compensation insurance.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 11732.5 is added to Article 2 (commencing with Section 11730) of Chapter 3 of Part 3 of Division 2 of the Insurance Code, as added by Section 2 of Chapter 228 of the Statutes of 1993, to read:

11732.5. Rates shall not be unfairly discriminatory. Rates are unfairly discriminatory if, after allowing for practical limitations, price differentials fail to reflect equitably the difference in expected losses and expenses. A rate of an insurer shall not be deemed unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expenses, or like expenses but different loss exposures, as long as the rate reflects the differences with reasonable accuracy.

SEC. 2. Section 11735 of the Insurance Code, as added by Chapter 228 of the Statutes of 1993, is amended to read:

11735. (a) Every insurer shall file with the commissioner all rates, rating plans, and supplementary rate information which are to be used in this state. The rates and supplementary information shall be filed no later than 30 days prior to the effective date. If the commissioner finds, after a hearing, that an insurer's rates require closer supervision because of the insurer's financial condition, as determined pursuant to Section 11733, the insurer shall file with the commissioner at least 30 days before the effective date, all of those rates, the supplementary rate information, and supporting information as prescribed by the commissioner. Upon application by the filer, the commissioner may authorize an earlier effective date.

(b) Rates filed pursuant to this section shall be filed in the form and manner prescribed by the commissioner. All rates, supplementary information, and any supporting information for rates filed under this article shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any

person on request and upon payment of a reasonable charge.

(c) Upon the written application of the insurer and insured, stating its reasons therefor, filed with the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(d) Notwithstanding Section 679.70, no advisory organization may issue nor may any insurer use any classification system or rate, as applied or used, that violates Section 679.71 or 679.72 or that violates the Unruh Civil Rights Act.

SEC. 2.5. Section 11735 of the Insurance Code, as added by Chapter 228 of the Statutes of 1993, is amended to read:

11735. (a) Every insurer shall file with the commissioner all rates, rating plans, and supplementary rate information which are to be used in this state. The rates and supplementary information shall be filed no later than 30 days prior to the effective date. If the commissioner finds, after a hearing, that an insurer's rates require closer supervision because of the insurer's financial condition, as determined pursuant to Section 11733, the insurer shall file with the commissioner at least 30 days before the effective date, all of those rates , the supplementary rate information and supporting information as prescribed by the commissioner. Upon application by the filer, the commissioner may authorize an earlier effective date.

(b) Rates filed pursuant to this section shall be filed in the form and manner prescribed by the commissioner. All rates, supplementary information and any supporting information for rates filed under this article shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge.

(c) Upon the written application of the insurer and insured, stating its reasons therefor, filed with the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(d) Notwithstanding Section 679.70, no advisory organization may issue nor may any insurer use any classification system or rate, as applied or used, that violates Section 679.71 or 679.72 or that violates the Unruh Civil Rights Act.

(e) Notwithstanding Sections 11657 to 11660, inclusive, a rating plan or supplementary rate information filed with the commissioner for purposes of offering deductibles to policyholders for all or part of benefits payable under the policy shall be deemed complete if the filing contains the following:

(1) A copy of the deductible endorsement that is to be attached to the policy to effectuate deductible coverage.

(2) Endorsement language that protects the rights of injured workers and ensures that benefits are paid without regard to any deductible. The endorsement shall specify that the nonpayment of deductible amounts by the policyholder shall not relieve the insurer from payment of compensation for injuries sustained by the employee during the period of time the endorsed policy was in

effect. The endorsement shall provide that deductible amounts for workers' compensation insurance coverage shall not be terminated retroactively for nonpayment of deductible amounts.

(3) The endorsement shall provide that notwithstanding the deductible, the insurer shall pay all the obligations of the employer for workers' compensation benefits for injuries occurring during the policy period. Payment by the insurer of any amounts within the deductible shall be treated as an advancement of funds by the insurer to the employer and shall create a legal obligation for reimbursements, and may be secured by appropriate security.

(4) The endorsement shall specify whether loss adjustment expenses are to be treated as advancements within the deductible to be reimbursed by the employer.

(5) An explanation of how premium reductions reflecting the type and level of the deductible will be clearly set forth for the policyholder.

(6) The filing shall provide that premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount, and the premium reductions reflect the type and level of deductible consistent with accepted actuarial standards.

(7) The filing shall provide that nonpayment of deductible amounts by the insured employer to its insurer shall be treated under the policy in the same manner as payment or nonpayment of premium.

(f) The insurer shall report and record losses subject to the deductible as losses for purposes of ratemaking and application of the experience rating plan on the same bases as losses under policies providing first dollar coverage.

SEC. 2.7. Section 11735 of the Insurance Code, as added by Chapter 228 of the Statutes of 1993, is amended to read:

11735. (a) Every insurer shall file with the commissioner all rates, rating plans, and supplementary rate information which are to be used in this state. The rates and supplementary information shall be filed no later than 30 days prior to the effective date. If the commissioner finds, after a hearing, that an insurer's rates require closer supervision because of the insurer's financial condition, as determined pursuant to Section 11733, the insurer shall file with the commissioner at least 30 days before the effective date, all of those rates, the supplementary rate information and supporting information as prescribed by the commissioner. Upon application by the filer, the commissioner may authorize an earlier effective date.

(b) Rates filed pursuant to this section shall be filed in the form and manner prescribed by the commissioner. All rates, supplementary information and any supporting information for rates filed under this article shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge.

(c) Upon the written application of the insurer and insured,

stating its reasons therefor, filed with the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(d) Notwithstanding Section 679.70, no rating organization may issue nor may any insurer use any classification system or rate, as applied or used, that violates Section 679.71 or 679.72 or that violates the Unruh Civil Rights Act.

SEC. 2.9. Section 11735 of the Insurance Code, as added by Chapter 228 of the Statutes of 1993, is amended to read:

11735. (a) Every insurer shall file with the commissioner all rates, rating plans, and supplementary rate information which are to be used in this state. The rates and supplementary information shall be filed no later than 30 days prior to the effective date. If the commissioner finds, after a hearing, that an insurer's rates require closer supervision because of the insurer's financial condition, as determined pursuant to Section 11733, the insurer shall file with the commissioner at least 30 days before the effective date, all of those rates , the supplementary rate information and supporting information as prescribed by the commissioner. Upon application by the filer, the commissioner may authorize an earlier effective date.

(b) Rates filed pursuant to this section shall be filed in the form and manner prescribed by the commissioner. All rates, supplementary information and any supporting information for rates filed under this article shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge.

(c) Upon the written application of the insurer and insured, stating its reasons therefor, filed with the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(d) Notwithstanding Section 679.70, no rating organization may issue nor may any insurer use any classification system or rate, as applied or used, that violates Section 679.71 or 679.72 or that violates the Unruh Civil Rights Act.

(e) Notwithstanding Sections 11657 to 11660, inclusive, a rating plan or supplementary rate information filed with the commissioner for purposes of offering deductibles to policyholders for all or part of benefits payable under the policy shall be deemed complete if the filing contains the following:

(1) A copy of the deductible endorsement that is to be attached to the policy to effectuate deductible coverage.

(2) Endorsement language that protects the rights of injured workers and ensures that benefits are paid without regard to any deductible. The endorsement shall specify that the nonpayment of deductible amounts by the policyholder shall not relieve the insurer from payment of compensation for injuries sustained by the employee during the period of time the endorsed policy was in effect. The endorsement shall provide that deductible amounts for workers' compensation insurance coverage shall not be terminated

retroactively for nonpayment of deductible amounts.

(3) The endorsement shall provide that notwithstanding the deductible, the insurer shall pay all the obligations of the employer for workers' compensation benefits for injuries occurring during the policy period. Payment by the insurer of any amounts within the deductible shall be treated as an advancement of funds by the insurer to the employer and shall create a legal obligation for reimbursements, and may be secured by appropriate security.

(4) The endorsement shall specify whether loss adjustment expenses are to be treated as advancements within the deductible to be reimbursed by the employer.

(5) An explanation of how premium reductions reflecting the type and level of the deductible will be clearly set forth for the policyholder.

(6) The filing shall provide that premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount, and the premium reductions reflect the type and level of deductible consistent with accepted actuarial standards.

(7) The filing shall provide that nonpayment of deductible amounts by the insured employer to its insurer shall be treated under the policy in the same manner as payment or nonpayment of premium.

(f) The insurer shall report and record losses subject to the deductible as losses for purposes of ratemaking and application of the experience rating plan on the same bases as losses under policies providing first dollar coverage.

SEC. 3. (a) Section 2.5 of this bill incorporates amendments to Section 11735 of the Insurance Code proposed by both this bill and AB 3075. It shall only become operative if (1) both bills are enacted and become effective January 1, 1995, (2) each bill amends Section 11735 of the Insurance Code, (3) SB 1803 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 3075, in which case Sections 2, 2.7, and 2.9 of this bill shall not become operative.

(b) Section 2.7 of this bill incorporates amendments to Section 11735 of the Insurance Code proposed by both this bill and SB 1803. It shall only become operative if (1) both bills are enacted and become effective January 1, 1995, (2) each bill amends Section 11735 of the Insurance Code, (3) AB 3075 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1803 in which case Sections 2, 2.5, and 2.9 of this bill shall not become operative.

(c) Section 2.9 of this bill incorporates amendments to Section 11735 of the Insurance Code proposed by this bill, AB 3075, and SB 1803. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1995, (2) all three bills amend Section 11735 of the Insurance Code, and (3) this bill is enacted after AB 3075 and SB 1803, in which case Sections 2, 2.5, and 2.7 of this bill

shall not become operative.

CHAPTER 733

An act to amend Sections 13575 and 13576 of, and to add Sections 13579, 13580, 13581, and 13582 to, the Water Code, relating to water.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 13575 of the Water Code is amended to read:

13575. (a) This chapter shall be known and may be cited as the Water Recycling Act of 1991.

(b) As used in this chapter, the following terms have the following meanings:

(1) "Recycled water producer" means any local public entity that produces recycled water.

(2) "Recycled water wholesaler" means any local public entity that distributes recycled water to retail water suppliers and which has constructed, or is constructing, a recycled water distribution system.

(3) "Retail water supplier" means any local entity, including a public agency, city, county, or private water company, that provides retail water service.

SEC. 2. Section 13576 of the Water Code is amended to read:

13576. The Legislature hereby makes the following findings and declarations:

(a) The State of California is subject to periodic drought conditions.

(b) The development of traditional water resources in California has not kept pace with the state's population, which is growing at the rate of over 700,000 per year and which is anticipated to reach 36 million by the year 2010.

(c) There is a need for a reliable source of water for uses not related to the supply of potable water to protect investments in agriculture, greenbelts, and recreation and to protect and enhance fisheries, wildlife habitat, and riparian areas.

(d) The environmental benefits of recycled water include a reduced demand for water in the Sacramento-San Joaquin Delta which is otherwise needed to maintain water quality, reduced discharge of waste into the ocean, and the enhancement of recreation, fisheries, and wetlands.

(e) The use of recycled water has proven to be safe from a public health standpoint, and the State Department of Health Services is updating regulations for the use of recycled water.

(f) The use of recycled water is a cost-effective, reliable method of helping to meet California's water supply needs.

(g) The development of the infrastructure to distribute recycled water will provide jobs and enhance the economy of the state.

(h) Retail water suppliers and recycled water producers and wholesalers should promote the substitution of recycled water for potable water in order to maximize the appropriate cost-effective use of recycled water in California.

(i) Recycled water producers and retail water suppliers should cooperate in joint technical, economic, and environmental studies, as appropriate, to determine the feasibility of providing recycled water service.

(j) Retail water suppliers and recycled water producers and wholesalers should be encouraged to enter into contracts to facilitate the service of recycled and potable water by the retail water suppliers in their service areas in the most efficient and cost-effective manner. Wholesale prices set by recycled water producers and recycled water wholesalers, and rates that retail water suppliers are authorized to charge for recycled water, should reflect an equitable sharing of the costs and benefits associated with the development and use of recycled water.

SEC. 3. Section 13579 is added to the Water Code, to read:

13579. (a) In order to achieve the goals established in Section 13577, retail water suppliers shall identify potential uses for recycled water within their service areas, potential customers for recycled water service within their service areas, and, within a reasonable time, potential sources of recycled water.

(b) Recycled water producers and recycled water wholesalers may also identify potential uses for recycled water, and may assist retail water suppliers in identifying potential customers for recycled water service within the service areas of those retail water suppliers.

(c) Recycled water producers and retail water suppliers may cooperate in joint technical, economic, and environmental studies, as appropriate, to determine the feasibility of providing recycled water service consistent with the criteria set forth in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 13550.

SEC. 4. Section 13580 is added to the Water Code, to read:

13580. (a) A retail water supplier that has identified a potential use or customer pursuant to Section 13579 may apply to a recycled water producer or recycled water wholesaler for a recycled water supply.

(b) A recycled water producer or recycled water wholesaler that has identified a potential use or customer pursuant to Section 13579 may, in writing, request a retail water supplier to enter into an agreement to provide recycled water to the potential customer.

SEC. 5. Section 13581 is added to the Water Code, to read:

13581. If there is a failure to agree on terms and conditions for a recycled water supply agreement within six months after the receipt of the application for recycled water pursuant to Section 13580,

either or both parties may request a formal mediation process. If both parties agree to participate in the formal mediation process, the parties shall commence mediation within four months after the mediation request is made. If the parties cannot agree on a mediator, the director shall appoint a mediator. The mediator may recommend to the parties appropriate terms and conditions applicable to the service of recycled water. The cost for the services of the mediator shall be divided equally among the parties to the mediation and shall not exceed twenty thousand dollars ($20,000).

SEC. 6. Section 13582 is added to the Water Code, to read:

13582. This chapter is not intended to alter any rights, remedies, or obligations which may exist pursuant to Article 1.5 (commencing with Section 1210) of Chapter 1 of Part 2 of Division 2 of this code or Chapter 8.5 (commencing with Section 1501) of Part 1 of Division 1 of the Public Utilities Code.

CHAPTER 734

An act to amend Section 42402 of the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 42402 of the Health and Safety Code is amended to read:

42402. (a) Except as otherwise provided in subdivision (b) or in Section 42402.1, 42402.2, or 42402.3, any person who violates this part, any order issued pursuant to Section 42316, or any rule, regulation, permit, or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than one thousand dollars ($1,000).

(b) (1) Any person who violates any provision of this part, any order issued pursuant to Section 42316, or any rule, regulation, permit, or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than ten thousand dollars ($10,000).

(2) (A) If a civil penalty in excess of one thousand dollars ($1,000) for each day in which the violation occurs is sought, there is no liability under this subdivision if the person accused of the violation alleges by affirmative defense and establishes that the violation was

caused by an act which was not the result of intentional or negligent conduct.

(B) Subparagraph (A) does not apply to a violation of federally enforceable requirements that occur at a Title V source in a district in which a Title V permit program has been fully approved.

(C) Subparagraph (A) does not apply to a person who is determined to have violated an annual facility emissions cap established pursuant to a market-based incentive program adopted by a district pursuant to subdivision (b) of Section 39616.

(c) Each day during any portion of which a violation occurs is a separate offense.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to allow the recently adopted market-based incentive program adopted in the South Coast Air Quality Management District to be implemented to the fullest possible extent, it is necessary that this act take effect immediately.

CHAPTER 735

An act to add Sections 17085.5 and 19132.5 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 17085.5 is added to the Revenue and Taxation Code, to read:

17085.5. (a) In the case of any qualified distribution made on or after January 17, 1994, and before January 18, 1995, no additional tax shall be imposed in accordance with Section 72(m), (q), or (t) of the Internal Revenue Code as modified by Section 17085(c), relating to the 2½ percent additional tax on premature or early distributions, to the extent that the qualified distribution is made to any individual who suffered a hardship as a result of the Northridge earthquake of January 1994, any related aftershock, or any related casualty.

(b) For purposes of this section:

(1) "Hardship" includes, but is not limited to, personal injury or property damage of the distributee or any member of the distributee's household.

(2) "Qualified distribution" means any of the following:

(A) A distribution from an individual retirement account, as defined in Section 408 of the Internal Revenue Code.

(B) A distribution from a plan qualified under Section 401(a) of the Internal Revenue Code to a self-employed individual within the meaning of Section 401(c)(1) of the Internal Revenue Code.

(C) A distribution from a qualified annuity plan described in Section 403(a) of the Internal Revenue Code to a self-employed individual within the meaning of Section 401(c)(1) of the Internal Revenue Code.

SEC. 2. Section 19132.5 is added to the Revenue and Taxation Code, to read:

19132.5. (a) In the case of a qualified taxpayer, no penalty shall be assessed under Section 19132 if the return is filed timely (not later than the extended due date granted under Section 18567 or 18604) and the tax required to be paid on or before the due date of the return, without regard to extension, is paid within the following time:

(1) In the case of an individual, partnership, or fiduciary, within six months of the original due date of the return.

(2) In the case of a bank or corporation, within seven months of the original due date of the return.

(b) Any penalty imposed under Section 19132 shall be assessed from the original due date of the return if the taxpayer fails to pay the tax within the time specified in this section.

(c) This section shall apply to payment of the amount shown as tax on the original returns required to be filed during calender year 1994.

(d) For purposes of this section, "qualified taxpayer" means any bank, corporation, fiduciary, partnership, or individual taxpayer to whom one of the following applies as a result of the Northridge earthquake of January 1994, any related aftershock, or any related casualty:

(1) The qualified taxpayer sustained any significant property loss.

(2) The qualified taxpayer suffered a loss of employment due to property damage suffered by his or her employer.

(3) The qualified taxpayer realized significant loss of business income from a business located within the Northridge earthquake area.

SEC. 3. Section 1 of this act shall be operative only in those taxable years in which substantially similar treatment is allowed under federal law.

SEC. 4. It is the intent of the Legislature that Section 1 of this act be broadly interpreted so as to afford the maximum relief to any individual who has suffered a hardship as a result of the Northridge earthquake of January 1994, any related aftershock, or any related casualty. However, the Legislature recognizes that the provisions of this bill should be consistent with the provisions of federal law.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 736

An act relating to environmental quality.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. The Legislature hereby requests that the Office of Planning and Research, when next revising the California Environmental Quality Act Guidelines (Chapter 3 (commencing with Section 15000) of Title 14 of the California Code of Regulations) pursuant to Section 21087 of the Public Resources Code, recommend changes to those guidelines that would clarify that subdivision (c) of Section 15301 of Title 14 of the California Code of Regulations is intended to apply to the grading of an existing road shoulder for purposes of public safety.

CHAPTER 737

An act to amend Section 374.3 of the Penal Code, relating to crimes.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 374.3 of the Penal Code is amended to read:

374.3. (a) It is unlawful to dump or cause to be dumped any waste matter in or upon any public or private highway or road, including any portion of the right-of-way thereof, or in or upon any private property into or upon which the public is admitted by easement or license, or upon any private property without the consent of the owner, or in or upon any public park or other public property other than property designated or set aside for that purpose by the governing board or body having charge of that property.

(b) It is unlawful to place, deposit, or dump, or cause to be placed, deposited, or dumped, any rocks or dirt in or upon any private highway or road, including any portion of the right-of-way thereof, or any private property, without the consent of the owner, or in or upon any public park or other public property, without the consent of the state or local agency having jurisdiction over the highway, road, or property.

(c) Any person violating this section is guilty of an infraction. Each day that waste placed, deposited, or dumped in violation of this section remains is a separate violation.

(d) This section does not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by a local health department, local fire department or district providing fire protection services, or the Department of Forestry and Fire Protection, in which case this section applies.

(e) A person convicted of a violation of this section shall be punished by a mandatory fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) upon a first conviction, by a mandatory fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) upon a second conviction, and by a mandatory fine of not less than seven hundred fifty dollars ($750) nor more than one thousand dollars ($1,000) upon a third or subsequent conviction. If the court finds that the waste matter placed, deposited, or dumped was used tires, the fine prescribed in this subdivision shall be doubled.

(f) The court may require, in addition to any fine imposed upon a conviction, that, as a condition of probation and in addition to any other condition of probation, a person convicted under this section remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped upon public or private property.

(g) Except when the court requires the convicted person to remove waste matter which he or she is responsible for dumping as a condition of probation, the court may, in addition to the fine imposed upon a conviction, require as a condition of probation, in addition to any other condition of probation, that any person convicted of a violation of this section pick up waste matter at a time and place within the jurisdiction of the court for not less than eight hours.

(h) (1) Any person who places, deposits, or dumps, or causes to be placed, deposited, or dumped, waste matter in violation of this section in commercial quantities shall be guilty of a misdemeanor punishable by imprisonment in a county jail for not more than six months and by a trebled fine. The fine is mandatory and, when trebled, shall amount to not less than three hundred dollars ($300) nor more than one thousand dollars ($1,000) upon a first conviction, not less than one thousand five hundred dollars ($1,500) nor more than three thousand dollars ($3,000) upon a second conviction, and not less than two thousand two hundred fifty dollars ($2,250) nor more than three thousand dollars ($3,000) upon a third or subsequent conviction.

(2) "Commercial quantities" means an amount of waste matter generated in the course of a trade, business, profession, or occupation. This subdivision does not apply to the dumping of household waste at a person's residence.

(i) For purposes of this section, "person" means an individual, trust, firm, partnership, joint stock company, joint venture, or

corporation.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 738

An act to amend Sections 25163, 25168.1, and 25169.1 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 25163 of the Health and Safety Code, as amended by Section 3 of Chapter 913 of the Statutes of 1993, is amended to read:

25163. (a) (1) Except as otherwise provided in subdivisions (b), (c), (f), and (g), it is unlawful for any person to carry on, or engage in, the transportation of hazardous wastes, unless the person holds a valid registration issued by the department, and it shall be unlawful for any person to transfer custody of a hazardous waste to a transporter who does not hold a valid registration issued by the department. A person who holds a valid registration issued by the department pursuant to this section is a registered hazardous waste transporter, for purposes of this chapter. Any registration issued by the department to a transporter of hazardous waste is not transferable from the person to whom it was issued to any other person.

(2) Any person who transports hazardous waste in a vehicle shall have a valid registration issued by the department in his or her possession while transporting the hazardous waste. The registration certificate shall be shown upon demand to any representative of the department, officer of the Department of the California Highway Patrol, any local health officer, or any public officer designated by the department. Any person registered pursuant to this section may obtain additional copies of the registration from the department upon the payment of a fee of two dollars ($2) for each copy requested, in accordance with Section 12196 of the Government Code.

(3) The hazardous waste information required and collected for registration pursuant to this subdivision shall be recorded and maintained in the management information system operated by the Department of the California Highway Patrol.

(b) Persons transporting only septic tank, cesspool, seepage pit, or chemical toilet waste that does not contain a hazardous waste originating from other than the body of a human or animal and who hold an unrevoked registration issued by the health officer or the health officer's authorized representative pursuant to Chapter 6 (commencing with Section 25000) are exempt from the requirements of subdivision (a).

(c) Persons transporting hazardous wastes to a permitted hazardous waste facility for transfer, treatment, recycling, or disposal, which wastes do not exceed a total volume of five gallons or do not exceed a total weight of 50 pounds, are exempt from the requirements of subdivisions (a) and (e) and from the requirements of Section 25160 concerning possession of the manifest while transporting hazardous waste, upon meeting all of the following conditions:

(1) The hazardous wastes are transported in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during the transporting.

(2) Different hazardous waste materials are not mixed within a container during the transporting.

(3) If the hazardous waste is extremely hazardous waste or acutely hazardous waste, the extremely hazardous waste or acutely hazardous waste was not generated in the course of any business, and is not more than 2.2 pounds.

(4) The person transporting the hazardous waste is the producer of that hazardous waste, and the person produces not more than 100 kilograms of hazardous waste in any month.

(5) The person transporting the hazardous waste does not accumulate more than a total of 1,000 kilograms of hazardous waste onsite at any one time.

(d) Any person registered as a hazardous waste transporter pursuant to subdivision (a) is not subject to the registration requirements of Chapter 6 (commencing with Section 25000), but shall comply with those terms, conditions, orders, and directions that the health officer or the health officer's authorized representative may determine to be necessary for the protection of human health and comfort, and shall otherwise comply with the requirements for statements as provided in Section 25007. Violations of those requirements of Section 25007 shall be punished as provided in Section 25010. Proof of registration pursuant to subdivision (a) shall be submitted by mail or in person to the local health officer in the city or county in which the registered hazardous waste transporter will be conducting the activities described in Section 25001.

(e) It is unlawful for any person to transport hazardous waste in any truck, trailer, semitrailer, vacuum tank, or cargo tank not

inspected by the Department of the California Highway Patrol or to transport hazardous waste in any container, other than a container packaged pursuant to United States Department of Transportation regulations, which has not been inspected by the Department of the California Highway Patrol, or in a rolloff bin which has not been inspected, certified, and maintained in compliance with subdivisions (b) and (c) of Section 25169.1.

(f) Any person authorized to collect solid waste, as defined in Section 40191 of the Public Resources Code, who unknowingly transports hazardous waste to a solid waste facility, as defined in Section 40194 of the Public Resources Code, incidental to the collection of solid waste is not subject to subdivisions (a) and (e).

(g) Any person transporting household hazardous waste or a conditionally exempt small quantity generator transporting hazardous waste to an authorized household hazardous waste collection facility pursuant to Section 25218.5 is exempt from subdivisions (a) and (e) and from paragraph (1) of subdivision (d) of Section 25160 requiring possession of the manifest while transporting hazardous waste.

(h) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 2. Section 25163 of the Health and Safety Code, as amended by Section 4 of Chapter 913 of the Statutes of 1993, is amended to read:

25163. (a) (1) Except as otherwise provided in subdivisions (b), (c), (f), and (g), it is unlawful for any person to carry on, or engage in, the transportation of hazardous wastes, unless the person holds a valid registration issued by the department, and it shall be unlawful for any person to transfer custody of a hazardous waste to a transporter who does not hold a valid registration issued by the department. A person who holds a valid registration issued by the department pursuant to this section is a registered hazardous waste transporter, for purposes of this chapter. Any registration issued by the department to a transporter of hazardous waste is not transferable from the person to whom it was issued to any other person.

(2) Any person who transports hazardous waste in a vehicle shall have a valid registration issued by the department in his or her possession while transporting the hazardous waste. The registration certificate shall be shown upon demand to any representative of the department, officer of the Department of the California Highway Patrol, any local health officer, or any public officer designated by the department. Any person registered pursuant to this section may obtain additional copies of the registration from the department upon the payment of a fee of two dollars ($2) for each copy requested, in accordance with Section 12196 of the Government Code.

(3) The hazardous waste information required and collected for

registration pursuant to this subdivision shall be recorded and maintained in the management information system operated by the Department of the California Highway Patrol.

(b) Persons transporting only septic tank, cesspool, seepage pit, or chemical toilet waste that does not contain a hazardous waste originating from other than the body of a human or animal and who hold an unrevoked registration issued by the health officer or the health officer's authorized representative pursuant to Chapter 6 (commencing with Section 25000) are exempt from the requirements of subdivision (a).

(c) Persons transporting hazardous wastes to a permitted hazardous waste facility for transfer, treatment, recycling, or disposal, which wastes do not exceed a total volume of five gallons or do not exceed a total weight of 50 pounds, are exempt from the requirements of subdivisions (a) and (e) and from the requirements of Section 25160 concerning possession of the manifest while transporting hazardous waste, upon meeting all of the following conditions:

(1) The hazardous wastes are transported in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during the transporting.

(2) Different hazardous waste materials are not mixed within a container during the transporting.

(3) If the hazardous waste is extremely hazardous waste or acutely hazardous waste, the extremely hazardous waste or acutely hazardous waste was not generated in the course of any business, and is not more than 2.2 pounds.

(4) The person transporting the hazardous waste is the producer of that hazardous waste, and the person produces not more than 100 kilograms of hazardous waste in any month.

(5) The person transporting the hazardous waste does not accumulate more than a total of 1,000 kilograms of hazardous waste onsite at any one time.

(d) Any person registered as a hazardous waste transporter pursuant to subdivision (a) is not subject to the registration requirements of Chapter 6 (commencing with Section 25000), but shall comply with those terms, conditions, orders, and directions that the health officer or the health officer's authorized representative may determine to be necessary for the protection of human health and comfort, and shall otherwise comply with the requirements for statements as provided in Section 25007. Violations of those requirements of Section 25007 shall be punished as provided in Section 25010. Proof of registration pursuant to subdivision (a) shall be submitted by mail or in person to the local health officer in the city or county in which the registered hazardous waste transporter will be conducting the activities described in Section 25001.

(e) It is unlawful for any person to transport hazardous waste in any truck, trailer, semitrailer, vacuum tank, or cargo tank not inspected by the Department of the California Highway Patrol or to

transport hazardous waste in any container, other than a container packaged pursuant to United States Department of Transportation regulations, which has not been inspected by the Department of the California Highway Patrol.

(f) Any person authorized to collect solid waste, as defined in Section 40191 of the Public Resources Code, who unknowingly transports hazardous waste to a solid waste facility, as defined in Section 40194 of the Public Resources Code, incidental to the collection of solid waste is not subject to subdivisions (a) and (e).

(g) Any person transporting household hazardous waste or a conditionally exempt small quantity generator transporting hazardous waste to an authorized household hazardous waste collection facility pursuant to Section 25218.5 is exempt from subdivisions (a) and (e) and from paragraph (1) of subdivision (d) of Section 25160 requiring possession of the manifest while transporting hazardous waste.

(h) This section shall become operative January 1, 1998.

SEC. 3. Section 25168.1 of the Health and Safety Code, as amended by Section 3 of Chapter 1084 of the Statutes of 1991, is amended to read:

25168.1. (a) The department shall adopt regulations for containers used to transport hazardous wastes not subject to the federal regulations contained in Title 49 of the Code of Federal Regulations. The Department of the California Highway Patrol shall conduct an annual inspection of every truck, trailer, semitrailer, vacuum tank, cargo tank, or container, except for any rolloff bin inspected in accordance with subdivision (b) of Section 25169.1, used by registered waste transporters to transport hazardous waste on the highways, and every related maintenance facility or terminal and any records of registered waste transporters relating to vehicle maintenance and drivers' hours of service. The inspection shall be designed to determine if each vehicle and operation thereof complies with the Vehicle Code and with regulations adopted by the Department of the California Highway Patrol under subdivisions (a) and (b) of Section 34501 of the Vehicle Code, and by the department for containers used to transport hazardous waste. The Department of the California Highway Patrol shall determine whether the construction, design, equipment, and safety features of every such truck, trailer, semitrailer, vacuum tank, cargo tank, or container are in compliance with the standards which the department determines are necessary for the safe transportation of hazardous waste.

(b) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 4. Section 25168.1 of the Health and Safety Code, as added by Section 4 of Chapter 1084 of the Statutes of 1991, is amended to read:

25168.1. (a) The department shall adopt regulations for containers used to transport hazardous wastes not covered or

packaged as required by federal regulations contained in Title 49 of the Code of Federal Regulations. The Department of the California Highway Patrol shall conduct an annual inspection of every truck, trailer, semitrailer, vacuum tank, cargo tank, or container used by registered waste transporters to transport hazardous waste on the highways, and every related maintenance facility or terminal and any records of registered waste transporters relating to vehicle maintenance and drivers' hours of service. The inspection shall be designed to determine if each vehicle and operation thereof complies with the Vehicle Code and with regulations adopted by the Department of the California Highway Patrol under subdivisions (a) and (b) of Section 34501 of the Vehicle Code, and by the department for containers used to transport hazardous waste. The Department of the California Highway Patrol shall determine whether the construction, design, equipment, and safety features of every such truck, trailer, semitrailer, vacuum tank, cargo tank, or container are in compliance with the standards which the department determines are necessary for the safe transportation of hazardous waste.

(b) This section shall become operative January 1, 1998.

SEC. 5. Section 25169.1 of the Health and Safety Code, as amended by Section 5 of Chapter 1084 of the Statutes of 1991, is amended to read:

25169.1. (a) The Department of the California Highway Patrol shall inspect every truck, trailer, semitrailer, vacuum tank, cargo tank, or container which is not a rolloff bin subject to subdivision (b), used to transport hazardous waste on the highways at least once a year to ascertain whether its construction, design, equipment and safety features comply with the regulations adopted by the department pursuant to Section 25168.1.

(b) (1) Upon receipt of a properly completed application for a specified number of rolloff bins and payment of the required fee, in accordance with Sections 25168.4, 25168.5, and 25168.6, the department shall issue a certificate of compliance to a hazardous waste transporter for each rolloff bin applied for under subdivision (c).

(2) The department shall determine the size, shape, color, and design of the certificate of compliance issued pursuant to this subdivision, which shall be distinctly different in size, shape, color, and design from the certificates of compliance affixed by the Department of the California Highway Patrol.

(c) A hazardous waste transporter may apply, in writing, to the department for authorization to annually inspect and self-certify rolloff bins owned by the hazardous waste transporter, if all of the following requirements are met:

(1) The rolloff bin was inspected by the Department of the California Highway Patrol before it was placed into service.

(2) The rolloff bins are used only to transport hazardous waste, except extremely hazardous waste, in a solid physical state.

(3) No hazardous materials, including, but not limited to,

hazardous waste, as listed in Part 172 (commencing with Section 172.1) of Subchapter C of Chapter I of Title 49 of the Code of Federal Regulations, are transported, unless the hazardous material is a miscellaneous hazardous material (Class 9), as specified in Section 173.140 of Title 49 of the Code of Federal Regulations, or is not required to be labeled or placarded by the United States Department of Transportation.

(4) The hazardous waste transporter has a current satisfactory rating from the Department of the California Highway Patrol's terminal inspection for the three immediately consecutive preceding years.

(5) The department issues a letter of acknowledgment indicating approval for the hazardous waste transporter to inspect and certify the transporter's rolloff bins.

(6) The hazardous waste transporter affixes the certificate of compliance issued pursuant to subdivision (b) to the rolloff bin in a position normally visible during transportation.

(7) The hazardous waste transporter either personally inspects and self-certifies each rolloff bin or designates a specific employee to inspect and self-certify each rolloff bin.

(8) The hazardous waste transporter maintains an ability to respond to damages resulting from the operation of that business by obtaining insurance coverage in the minimum amount of one million five hundred thousand dollars ($1,500,000) of combined single limit coverage.

(d) A hazardous waste transporter who is issued a certificate of compliance pursuant to subdivision (b) shall do all of the following:

(1) Document, on a form provided by the department, the inspection of each rolloff bin, noting defects and repair measures taken, and provide to the department a record of the certificate of compliance issued to each rolloff bin. The document shall contain a list of the inspection items specified in paragraph (2) and the identification number of the rolloff bin, the date of inspection, the inspector's signature, the date of certification, and certificate of compliance number. The hazardous waste transporter shall retain a copy of the inspection records for each rolloff bin for three years from the date of certification, except the hazardous waste transporter shall retain these inspection records for longer than three years during the course of any unresolved enforcement action regarding hazardous waste transportation, or as requested by the department.

(2) Certify that each rolloff bin has been inspected visually for all of the following and is free from all of the following defects:

(A) Cracks, holes, and broken welds.

(B) Defects in doors and door hinges, gaskets, seals, and latching devices.

(C) Defects in loading and securement devices of the rolloff bin.

(D) Any other condition, including leakage, corrosion, or dents which render it unsafe for transportation service.

(3) Establish an effective ongoing maintenance program that will ensure that rolloff bins are not transported while loaded in a condition less than that required for certification. The hazardous waste transporter shall retain maintenance records for each rolloff bin for a period of three years from the date the maintenance was performed, except the hazardous waste transporter shall retain these maintenance records for longer than three years during the course of any unresolved enforcement action regarding hazardous waste transportation or as requested by the department.

(e) Authorized employees of the Department of the California Highway Patrol shall make random inspections of at least 25 percent of all rolloff bins certified pursuant to subdivision (b), and shall inspect all maintenance and inspection records of rolloff bins certified pursuant to subdivision (b). The Department of the California Highway Patrol may perform random inspections of rolloff bins and those records on both public and private property.

(f) In addition to the penalties specified in subdivision (g), any person who violates this section shall be punished as prescribed in Article 8 (commencing with Section 25180).

(g) A person who violates this section is subject to the following actions:

(1) For the first violation, the person is subject to a civil penalty of five hundred dollars ($500) for each rolloff bin determined by the Department of the California Highway Patrol or the department to be out of compliance with the requirements of this article.

(2) For the second violation, the person is subject to a civil penalty of one thousand dollars ($1,000) for each rolloff bin determined by the Department of the California Highway Patrol or the department to be out of compliance with the requirements of this article, and the department shall immediately revoke the hazardous waste transporter's authorization to inspect and self-certify the transporter's rolloff bins, pursuant to subdivisions (b) and (c), for a period of not less than one year. The department may deny any future application that the hazardous waste transporter submits to inspect and self-certify the transporter's rolloff bins if the transporter's authorization is revoked pursuant to this section.

(3) Notwithstanding Sections 25186.1 and 25186.2, and subdivision (i), the department may immediately suspend, for a period of one year, the registration of a hazardous waste transporter, who the Department of the California Highway Patrol or the department determines is willfully violating, and is substantially out of compliance with, the requirements of this section.

(4) Any authorized employee of the Department of the California Highway Patrol may remove the certificate of compliance on any rolloff bin certified pursuant to subdivision (b) which fails an inspection.

(h) Notwithstanding Section 25186.2, the department shall deny, suspend, or revoke the registration of any hazardous waste transporter pursuant to Section 25186.1 to prevent or mitigate an

imminent and substantial danger to the public health or safety or the environment.

(i) No person shall transport hazardous waste on streets and highways in this state, unless the truck, trailer, semitrailer, vacuum tank, cargo tank, or container in which the hazardous waste is being transported displays a certificate of compliance, issued by the department, showing that the vehicle has been inspected within the last 12 months.

(j) For the purposes of this section, the following terms have the following meaning:

(1) "Container" means any reusable portable tank or bin which has a capacity greater than 450 liters (119 gallons) and meets both of the following requirements:

(A) The container bears a permanently affixed, unique identification number or, if a container does not bear an identification number, the hazardous waste hauler affixes a permanent, unique identification number to the container.

(B) The number specified in subparagraph (A) shall be painted in characters not less than 1 inch in height or die stamped in characters not less than $\frac{3}{16}$ inch in height and shall be maintained in a legible condition.

(2) "Rolloff bin" means any box-type container used to store and transport hazardous waste. "Rolloff bin" does not include any tank, or any other packaging, built to a specification or exemption authorized by the United States Department of Transportation.

(3) "Solid physical state" means solid physical hazardous waste in which free liquids are not present.

(4) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure. Free liquids are not present when a 100 milliliter representative sample of the hazardous waste can be completely retained in a standard 400 micron conical paint filter for five minutes without loss of any portion of the waste from the bottom of the filter, or if the waste meets an equivalent test approved by the department.

(k) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 6. Section 25169.1 of the Health and Safety Code, as added by Section 6 of Chapter 1084 of the Statutes of 1991, is amended to read:

25169.1. (a) The Department of the California Highway Patrol shall inspect every truck, trailer, semitrailer, vacuum tank, cargo tank, or container used to transport hazardous waste on the highways at least once a year to ascertain whether its construction, design, equipment, and safety features comply with the regulations adopted by the department pursuant to Section 25168.1.

(b) No person shall transport hazardous waste on streets and highways in this state, unless the truck, trailer, semitrailer, vacuum tank, cargo tank, or container in which the hazardous waste is being

transported displays a certificate of compliance, issued by the department, showing that the vehicle has been inspected within the last 12 months.

(c) For the purposes of this section, "container" means any reusable portable tank or bin which has a capacity greater than 450 liters (119 gallons) and meets both of the following requirements:

(1) The container bears a permanently affixed, unique identification number or, if a container does not bear an identification number, the hazardous waste transporter affixes a permanent, unique identification number to the container.

(2) The number specified in paragraph (1) shall be painted in characters not less than 1 inch in height or die stamped in characters not less than 3/16 inch in height and shall be maintained in a legible condition.

(d) This section shall become operative January 1, 1998.

SEC. 7. On or before January 1, 1998, the Department of the California Highway Patrol shall prepare and submit a report to the Legislature on the inspection program conducted pursuant to this act, that addresses the cost of continuing the inspection program, the effectiveness of using state resources to conduct the program, and the impact of the program on the public health and safety.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 739

An act to amend Sections 25179.7 and 25179.13 of the Health and Safety Code, relating to hazardous waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 25179.7 of the Health and Safety Code is amended to read:

25179.7. (a) The department shall extend the implementation date until January 1, 1996, after which the land disposal of a hazardous waste is prohibited pursuant to Section 25179.6 for the

following categories of hazardous wastes:

(1) Any RCRA hazardous waste for which a treatment standard has not been adopted or for which the Environmental Protection Agency has granted a delay of the effective date of the standard pursuant to Section 6924 of Title 42 of the United States Code.

(2) Any non-RCRA hazardous waste subject to treatment standards based upon incineration, solvent extraction, or biological treatment.

(3) Any non-RCRA hazardous waste subject to the treatment standard adopted pursuant to paragraph (3) of subdivision (a) of Section 66268.106 of Title 26 of the California Code of Regulations.

(b) On and after January 1, 1996, the categories of waste subject to the extension granted in subdivision (a) shall be disposed of in accordance with the treatment standard adopted for that waste pursuant to Section 25179.6 unless either of the following occurs:

(1) For RCRA hazardous waste for which a treatment standard has not been adopted pursuant to Section 6924 of Title 42 of the United States Code, a treatment standard for that waste is adopted pursuant to Section 6924 of Title 42 of the United States Code before January 1, 1996.

(2) For non-RCRA hazardous wastes for which incineration has been identified as a treatment method pursuant to subdivision (b) of Section 25179.6, the department adopts, and implements by January 1, 1996, an alternative treatment standard pursuant to Section 25179.13.

SEC. 2. Section 25179.13 of the Health and Safety Code is amended to read:

25179.13. (a) Not later than January 1, 1995, the department shall issue written findings based upon a reevaluation of the treatment standards adopted for hazardous waste for which incineration has been identified as a treatment method pursuant to subdivision (b) of Section 25179.6. This reevaluation shall include an assessment of all of the various treatment methods applicable to each of these hazardous wastes, the effectiveness of each type of treatment method in reducing the harmful properties or characteristics of the waste, and the overall consequences to public health and safety and the environment associated with the required implementation of each treatment method.

(b) If the department finds, based upon the reevaluation required pursuant to subdivision (a), that treating a hazardous waste with a method other than incineration is at least as protective of the public health and safety and the environment as incineration, the department may adopt an alternative treatment standard which allows the use of that treatment method for that waste.

(c) No treatment standard shall be modified pursuant to this section unless the department first provides all interested parties with at least 60 days' notice of its pending action and holds at least three public hearings in three different areas of the state.

(d) Any treatment standard modified pursuant to this section

shall become operative in its modified form prior to January 1, 1996.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the Department of Toxic Substances Control has sufficient time to comply, in the most effective and thorough manner possible, with requirements relating to the treatment and disposal of hazardous waste, it is necessary that this act take effect immediately.

CHAPTER 740

An act to amend Section 18938 of, and to add Article 8 (commencing with Section 15097.100) and Article 9 (commencing with Section 15097.125) to Chapter 1 of Division 12.5 of, the Health and Safety Code, relating to building standards, and making an appropriation therefor.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Article 8 (commencing with Section 15097.100) is added to Chapter 1 of Division 12.5 of the Health and Safety Code, to read:

Article 8. New State Responsibilities for Seismic Safety in Hospitals

15097.100. (a) The Legislature hereby finds and declares the following:

(1) The Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 was created because of the loss of life in the collapse of hospitals during the Sylmar earthquake of 1971.

(2) We were reminded of the vulnerability of hospitals in the Northridge earthquake of January 17, 1994.

(3) Several hospitals built prior to the act suffered major damage and had to be evacuated.

(4) Hospitals built to the Alfred E. Alquist Hospital Facilities Seismic Safety Act standards resisted the Northridge earthquakes with very little structural damage demonstrating the value and necessity of this act.

(5) Both pre- and post-act hospitals suffered damage to architecture and to power and water systems that prevented hospitals from being operational, caused the loss of one life, triggered evacuations, unacceptable property losses, and added additional

concerns on emergency medical response.

(6) An earthquake survivability inventory of California's hospitals completed by the Office of Statewide Health Planning and Development in December 1989 indicated that over 83 percent of the state's hospital beds were in buildings that did not comply with the Alfred E. Alquist Hospital Facilities Seismic Safety Act because they were issued permits prior to the effective date of the act. Furthermore, 26 percent of the beds are in buildings posing significant risks of collapse since they were built before modern earthquake codes. The older hospitals pose significant threats of collapse in major earthquakes and loss of functions in smaller or more distant earthquakes.

(7) The 1989 survey also states: "Of the 490 hospitals surveyed, nine hospitals are in Alquist–Priolo Earthquake Fault Rupture Zones, 31 are in areas subject to soil liquefaction, 14 in areas with landslide potential, 33 in flood zones, and 29 have a possible loss or disruption of access. Two hundred five hospitals had no emergency fuel for their main boilers on hand, 19 had no emergency fuel for their emergency generators. Onsite emergency potable water was available at 273 hospitals and nonpotable water was available at 102 hospitals. Four hundred eighteen hospitals had emergency radios onsite, and 419 hospitals had inadequate or partially adequate equipment anchorage. In terms of available emergency preparedness, inadequate or partially inadequate equipment anchorage is still the most widespread shortcoming."

(8) This survey identifies many of the shortcomings that caused 23 hospitals to suspend some or all operations after the Northridge earthquake. However, one hospital was rebuilt to comply with the Alfred E. Alquist Hospital Facilities Seismic Safety Act after an older hospital building had partially collapsed in the 1971 Sylmar earthquake. The rebuilt hospital suffered failures in water distribution systems and had to be evacuated.

(9) The state must rely on hospitals to support patients and offer medical aid to earthquake victims.

(b) Therefore, it is the intent of the Legislature, that:

(1) By enacting this article, the state shall take steps to ensure that the expected earthquake performance of hospital buildings housing inpatients and providing primary basic services is disclosed to public agencies that have a need and a right to know, because the medical industry cannot immediately bring all hospital buildings into compliance with the Alfred E. Alquist Hospital Facilities Seismic Safety Act.

(2) The state shall encourage structural retrofits or replacements of hospital buildings housing inpatients and providing primary basic services that place lives at risk because of their potential for collapse during an earthquake.

(3) The state shall also encourage retrofits and enhancements to critical hospital architecture, equipment, and utility and communications systems to improve the ability of hospitals to remain

operational for those hospitals that do not pose risk to life.

15097.101. By June 30, 1996:

(a) The Office of Statewide Health Planning and Development, hereinafter called the office, shall develop definitions of earthquake performance categories for earthquake ground motions for both new and existing hospitals that are:

(1) Reasonably capable of providing services to the public after a disaster, designed and constructed to resist, insofar as practical, the forces generated by earthquakes, gravity, and winds, and in full compliance with the regulations and standards developed by the office pursuant to the Alfred E. Alquist Hospital Facilities Seismic Safety Act.

(2) In substantial compliance with the pre-1973 California Building Standards Codes, but not in substantial compliance with the regulations and standards developed by the office pursuant to the Alfred E. Alquist Hospital Facilities Seismic Safety Act. These buildings may not be repairable or functional but will not significantly jeopardize life.

(3) Potentially at significant risk of collapse and that represent a danger to the public.

(b) The office may define other earthquake performance categories as it deems necessary to meet the intent of this article and the Alfred E. Alquist Hospital Facilities Seismic Safety Act.

(c) Earthquake performance categories shall also include subgradations for risk to life, structural soundness, building contents, and nonstructural systems that are critical to providing basic services to hospital inpatients and the public after a disaster.

(d) Earthquake performance categories shall, as far as practicable, use language consistent with definitions and concepts as developed in the model codes and other state and federal agencies. Where the office finds that deviations from other's definitions and concepts are necessary and warranted to comply with the intent of the Alfred E. Alquist Hospital Facilities Seismic Safety Act, the act that added this article, or the specific nature or functions of hospitals, the office shall provide supporting documentation that justifies these differences.

(e) Insofar as practicable, the office shall define rapid seismic evaluation procedures that will allow owners to determine with reasonable certainty the existing applicable earthquake performance categories and the minimum acceptable earthquake performance categories for hospital buildings. These procedures shall allow for abbreviated analysis when known vulnerability is clear and when construction in accordance with post-1973 codes allows for an evaluation focusing on limited structural and nonstructural elements.

(f) The office, in consultation with the Hospital Building Safety Board, shall develop regulations to identify the most critical nonstructural systems and to prioritize the timeframes for upgrading those systems that represent the greatest risk of failure during an

earthquake.

(g) The office shall develop regulations as they apply to the administration of seismic standards for retrofit designs, construction, and field reviews for the purposes of this article.

(h) The office shall develop regulations for the purpose of reviewing requests and granting delays to hospitals demonstrating a need for more time to comply with Section 15097.127.

(i) The office shall submit all information developed pursuant to subdivisions (a) to (f), inclusive, to the California Building Standards Commission by June 30, 1996.

(j) The office shall submit all information developed pursuant to subdivisions (g) and (h) to the California Building Standards Commission by December 31, 1996.

(k) "Hospital building," as used in Article 8 and Article 9 of this chapter means a hospital building as defined in Section 15026 and that is also licensed pursuant to subdivision (a) of Section 1250, but does not include these buildings if the beds licensed pursuant to subdivision (a) of Section 1250, as of January 1, 1995, comprise 10 percent or less of the total licensed beds of the total physical plant, and does not include facilities owned or operated, or both, by the Department of Corrections.

15097.102. The office is responsible for reviewing and approving seismic evaluation reports, compliance schedules and construction documents that are developed by hospital owners, and field review of construction for work done pursuant to this article.

15097.103. For the 1994–95 through 1997–98 fiscal years, the sum of three hundred eighteen thousand dollars ($318,000) is hereby appropriated from the Hospital Building Fund to the office for the purpose of developing regulations pursuant to subdivisions (a) through (j) of Section 15097.101.

15097.104. (a) By December 31, 1996, the California Building Standards Commission shall review, revise as necessary and adopt earthquake performance categories, seismic evaluation procedures, and standards and timeframes for upgrading the most critical nonstructural systems as developed by the office. By June 30, 1997, the California Building Standards Commission shall review, revise as necessary, and adopt seismic retrofit building standards and procedures for reviewing requests and granting delays to hospitals that demonstrate a need for more time to comply with Section 15097.127.

(b) For purposes of this section all submittals made by the office pursuant to subdivisions (i) and (j) of Section 15097.101 shall be deemed as emergency regulations and adopted as such.

15097.105. (a) In the event of a seismic event, or other natural or manmade calamity that the office believes is of such a magnitude that it may have compromised the structural integrity of a hospital building, or any major system of a hospital building, the office shall send one or more authorized representatives to examine the structure or system. "System" for these purposes shall include, but

not be limited to, the electrical, mechanical, plumbing, and fire and life safety system of the hospital building. If in the opinion of the office, the structural integrity of the hospital building or any system has been compromised and damaged to a degree that the hospital building has been made unsafe to occupy, the office may cause to be placed on the hospital building either a red tag, a yellow tag, or a green tag.

(b) A "red" tag shall mean the hospital building is unsafe and shall be evacuated immediately. Access to red-tagged buildings shall be restricted to persons authorized by the office to enter.

(c) A "yellow" tag shall mean that the hospital building has been authorized for limited occupancy, and the authorized representative of the office shall write directly on the yellow tag that portion of the hospital building that may be entered with or without restriction and those portions that may not.

(d) A "green" tag shall mean the hospital building and all of its systems have been inspected by an authorized agent of the office, and have been found to be safe for use and occupancy.

(e) Any law enforcement or other public safety agency of this state shall grant access to hospital buildings by authorized representatives of the office upon the showing of appropriate credentials.

SEC. 2. Article 9 (commencing with Section 15097.125) is added to Chapter 1 of Division 12.5 of the Health and Safety Code, to read:

Article 9. Hospital Owner Responsibilities

15097.125. (a) Within three years after the adoption of the standards described in Section 15097.104, owners of all general acute care hospitals shall:

(1) Conduct seismic evaluations in accordance with procedures developed by the office pursuant to subdivision (e) of Section 15097.101 and submit evaluations to the office for its review and approval.

(2) Identify the most critical nonstructural systems that represent the greatest risk of failure during an earthquake and submit the timetables for upgrading those systems pursuant to subdivision (f) of Section 15097.101 to the office for its review and approval.

(b) Within three years after the adoption of standards described in Section 15097.104, owners of all general acute care hospitals shall prepare a plan and compliance schedule for each building under the office's jurisdiction that indicates the steps by which the hospital intends to bring their hospital buildings into substantial compliance with the regulations and standards developed by the office pursuant to the Alfred E. Alquist Hospital Facilities Seismic Safety Act and this act, identifies the phasing out of or retrofit of noncomplying structures and systems, or outlines steps for relocation of acute care services to facilities that comply with the regulations and standards developed by the office pursuant to Alfred E. Alquist Hospital

Facilities Seismic Safety Act and this act, and presents comprehensive plans and compliance schedules to the office for its review and approval, and integrates this schedule into the facility's master plan.

(c) Owners of all general acute care hospitals may be granted a one year allowance from the requirements of subdivision (b) of Section 15097.125 by the office if they demonstrate a need for more time to prepare plans and compliance schedules for their buildings.

15097.126. Within 60 days following the office's approval of the report submitted pursuant to subdivision (b) of Section 15097.125, general acute hospital building owners shall do all of the following:

(a) Inform the local office of emergency services or the equivalent agency, the California Office of Emergency Services, and the office, of each building's expected earthquake performance.

(b) Include all pertinent information regarding the building's expected earthquake performance in emergency training, response, and recovery plans.

(c) Include all pertinent information regarding the building's expected earthquake performance in capital outlay plans.

15097.127. After January 1, 2008, any general acute care hospital building that is determined to be a potential risk of collapse or pose significant loss of life shall only be used for nonacute care hospital purposes. A delay in this deadline may be granted by the office upon a demonstration by the owner that compliance will result in a loss of health care capacity that may not be provided by other general acute care hospitals within a reasonable proximity.

Upon compliance with this section, the hospital shall be issued a written notice of compliance by the office. The office shall send a written notice of violation to hospital owners that fail to comply with this section.

15097.128. In accordance with the compliance schedule approved by the office, but in any case no later than January 1, 2030, owners of all acute care inpatient hospitals shall either:

(a) Demolish, replace, or change to nonacute care use all hospital buildings not in substantial compliance with the regulations and standards developed by the office pursuant to the Alfred E. Alquist Hospital Facilities Seismic Safety Act and this act.

(b) Seismically retrofit all acute care inpatient hospital buildings so that they are in substantial compliance with the regulations and standards developed by the office pursuant to the Alfred E. Alquist Hospital Facilities Seismic Safety Act and this act.

Upon compliance with this section, the hospital shall be issued a written notice of compliance by the office. The office shall send a written notice of violation to hospital owners that fail to comply with this section.

15097.129. The office shall notify the State Department of Health Services of the hospital owners that have received a written notice of violation for failure to comply with either Section 15097.127 or 15097.128. Unless the hospital places its license in voluntary suspense,

the state department shall suspend or refuse to renew the license of a hospital that has received a notice of violation from the office because of its failure to comply with either Section 15097.127 or 15097.128. The license shall be reinstated or renewed upon presentation to the state department of a written notice of compliance issued by the office.

SEC. 3. Section 18938 of the Health and Safety Code is amended to read:

18938. (a) Building standards shall be filed with the Secretary of State and codified only after they have been approved by the commission and shall not be published in any other title of the California Code of Regulations. Emergency building standards shall be filed with the Secretary of State and shall take effect only after they have been approved by the commission as required by Section 18937. The filing of building standards adopted or approved pursuant to this part, or any certification with respect thereto, with the Secretary of State, or elsewhere as required by law, shall be done solely by the commission.

(b) The building standards contained in the Uniform Fire Code of the International Conference of Building Officials and the Western Fire Chiefs Association, Inc., the Uniform Building Code of the International Conference of Building Officials, Appendix Chapter 1 of the Uniform Code for Building Conservation of the International Conference of Building Officials, the Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials, the National Electrical Code of the National Fire Protection Association, and the Uniform Mechanical Code of the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials, as referenced in the California Building Standards Code, shall apply to all occupancies throughout the state and shall become effective 180 days after publication in the California Building Standards Code by the California Building Standards Commission or at a later date after publication established by the commission.

(c) Except as otherwise provided in this subdivision, an adoption, amendment, or repeal of a building standard shall become effective 180 days after its publication in the triennial edition of the California Building Standards Code or one of its supplements, or at any later date as approved by the California Building Standards Commission, with the exceptions of building standards adopted by the Occupational Safety and Health Standards Board, standards adopted pursuant to Section 25402 of the Public Resources Code, and those regulations that implement or enforce building standards. Building standards adopted by the Occupational Safety and Health Standards Board and those regulations that implement or enforce building standards shall become effective 30 days after filing by the commission with the Secretary of State. This subdivision shall not apply to emergency building standards, and building standards approved pursuant to subdivision (b) of Section 142.3 of the Labor

Code and published pursuant to subdivision (b) of Section 18943. A repeal of an amendment to the California Building Standards Code that is found by the commission to be more restrictive than the Uniform Building Code shall become effective 30 days after filing of the repeal by the commission with the Secretary of State.

(d) Emergency standards defined in subdivision (a) of Section 18913 shall become effective when approved by the commission, and filed with the Secretary of State, or upon any later date specified therein, and remain in effect as provided by Section 11346.1 of the Government Code and Section 18937 of this code. Emergency standards shall be distributed as soon as practicable after publication to all interested and affected parties. Notice of repeal, pursuant to Section 11346.1 of the Government Code, of emergency standards defined in subdivision (a) of Section 18913 within the period specified by that section, shall also be given to the parties by the affected agencies promptly after the termination of the statutory period pursuant to Section 11346.1 of the Government Code.

(e) This section shall not be applicable to the time limits set forth in Sections 17922 and 17958 for approval of uniform codes and for changes by local agencies in the California Building Standards Code.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 741

An act to amend Section 832.7 of the Penal Code, relating to peace officers.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 832.7 of the Penal Code is amended to read:

832.7. (a) Peace officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings

concerning the conduct of police officers or a police agency conducted by a grand jury, a district attorney's office, or the Attorney General's office.

(b) Notwithstanding subdivision (a), a department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed.

(c) Notwithstanding subdivision (a), a department or agency which employs peace officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

(d) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

(e) Nothing in this section shall affect the discovery or disclosure of information contained in a peace officer's personnel file pursuant to Section 1043 of the Evidence Code.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 742

An act to amend Section 25755 of the Business and Professions Code, and to amend Section 219 of the Code of Civil Procedure, relating to university police.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 25755 of the Business and Professions Code is amended to read:

25755. (a) The director and the persons employed by the department for the administration and enforcement of this division are peace officers in the enforcement of the penal provisions of this division, the rules of the department adopted under the provisions of this division, and any other penal provisions of law of this state prohibiting or regulating the sale, exposing for sale, use, possession, giving away, adulteration, dilution, misbranding, or mislabeling of alcoholic beverages or intoxicating liquors, and these persons are authorized, while acting as peace officers, to enforce any penal provisions of law while in the course of their employment.

(b) The director, the persons employed by the department for the administration and enforcement of this division, peace officers listed in Section 830.1 of the Penal Code, and those officers listed in Section 830.6 of the Penal Code while acting in the course and scope of their employment as peace officers may, in enforcing the provisions of this division, visit and inspect the premises of any licensee at any time during which the licensee is exercising the privileges authorized by his or her license on the premises.

(c) Members of the California State Police Division, members of the University of California and California State University police departments, and peace officers of the Department of Parks and Recreation, as defined in subdivisions (b), (c), (d), and (g) of Section 830.2 of the Penal Code, may, in enforcing the provisions of this division, visit and inspect the premises of any licensee located on state property at any time during which the licensee is exercising the privileges authorized by his or her license on the premises.

(d) Any agents assigned to the Drug Enforcement Narcotics Team by the director shall have successfully completed a four-week course on narcotics enforcement approved by the Commission on Peace Officer Standards and Training. In addition, all other agents of the department shall successfully complete the four-week course on narcotics enforcement approved by the Commission on Peace Officer Standards and Training by June 1, 1995.

SEC. 2. Section 219 of the Code of Civil Procedure is amended to read:

219. (a) Except as provided in subdivision (b), the jury commissioner shall randomly select jurors for jury panels to be sent to courtrooms for voir dire.

(b) (1) Notwithstanding subdivision (a), no peace officer, as defined in Section 830.1 and subdivision (a) of Section 830.2 of the Penal Code, shall be selected for voir dire in civil or criminal matters.

(2) Notwithstanding subdivision (a), no peace officer, as defined in subdivisions (c) and (d) of Section 830.2 of the Penal Code, shall be selected for voir dire in criminal matters.

CHAPTER 743

An act to add Section 65852.25 to the Government Code, relating to land use.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 65852.25 is added to the Government Code, to read:

65852.25. (a) No local agency shall enact or enforce any ordinance, regulation, or resolution that would prohibit the reconstruction, restoration, or rebuilding of a multifamily dwelling that is involuntarily damaged or destroyed by fire, other catastrophic event, or the public enemy.

(b) Notwithstanding subdivision (a), a local agency may prohibit the reconstruction, restoration, or rebuilding of a multifamily dwelling that is involuntarily damaged or destroyed by fire, other catastrophic event, or the public enemy, if the local agency determines that:

(1) The reconstruction, restoration, or rebuilding will be detrimental or injurious to the health, safety, or general welfare of persons residing or working in the neighborhood, or will be detrimental or injurious to property and improvements in the neighborhood.

(2) The existing nonconforming use of the building or structure would be more appropriately moved to a zone in which the use is permitted, or that there no longer exists a zone in which the existing nonconforming use is permitted.

(c) The dwelling may be reconstructed, restored, or rebuilt up to its predamaged size and number of dwelling units, and its nonconforming use, if any, may be resumed.

(d) Any reconstruction, restoration, or rebuilding undertaken pursuant to this section shall conform to all of the following:

(1) The California Building Standards Code as that code was in effect at the time of reconstruction, restoration, or rebuilding.

(2) Any more restrictive local building standards authorized pursuant to Sections 13869.7, 17958.7, and 18941.5 of the Health and Safety Code, as those standards were in effect at the time of reconstruction, restoration, or rebuilding.

(3) The State Historical Building Code (Part 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety Code) for work on qualified historical buildings or structures.

(4) Local zoning ordinances, so long as the predamage size and number of dwelling units are maintained.

(5) Architectural regulations and standards, so long as the predamage size and number of dwelling units are maintained.

(6) A building permit which shall be obtained within two years after the date of the damage or destruction.

(e) A local agency may enact or enforce an ordinance, regulation, or resolution that grants greater or more permissive rights to restore, reconstruct, or rebuild a multifamily dwelling.

(f) Notwithstanding subdivision (a), a local agency may prohibit the reconstruction, restoration, or rebuilding of a multifamily dwelling that is involuntarily damaged or destroyed by fire, other catastrophic event, or by the public enemy, if the building is located in an industrial zone.

(g) For purposes of this section, "multifamily dwelling" is defined as any structure designed for human habitation that is divided into two or more independent living quarters.

CHAPTER 744

An act to amend Section 5001.6 of the Public Resources Code, relating to the state park system.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 5001.6 of the Public Resources Code is amended to read:

5001.6. (a) Notwithstanding Section 5001.95, units of the state park system may be located within, and be a part of, a state seashore. However, any such unit shall be managed in accordance with its classification as provided in Section 5019.62.

(b) The following state seashores are hereby established, consisting of appropriate coastal lands described in this subdivision together with any other lands that may, from time to time, be acquired by the state as an addition to these state seashores:

(1) Del Norte State Seashore, consisting of lands lying between Pyramid Point and Point Saint George, particularly lands to assure public access to, and scenic protection of, Pyramid Point; beach and dune lands, water-bottom and shoreline lands at Lake Earl, including Lake Talawa, all within Del Norte County.

(2) Clem Miller State Seashore, consisting of lands extending from the mouth of the Eel River to Pudding Creek at Fort Bragg, and including lands at Bear Harbor, Usal Creek, Cottoneva Creek, shore and upland additions to Westport-Union Landing State Beach, DeHaven Creek uplands, Ten Mile River estuary, and MacKerricher State Park, all within Humboldt and Mendocino Counties.

(3) Mendocino Coast State Seashore, consisting of lands extending from Jughandle Creek to the Gualala River, and including the Pygmy Forest Ecological Staircase, Russian Gulch State Park, Mendocino

Headlands State Park, Van Damme State Park, Greenwood Creek Beach, Bowling Ball Beach and the Gualala River shoreline and estuary, all within Mendocino County.

(4) Sonoma Coast State Seashore, consisting of lands extending from the Gualala River to Bodega Head, and including the Kruse Rhododendron State Reserve, Salt Point State Park, Fort Ross State Historic Park, and Sonoma Coast State Beach, all within Sonoma County.

(5) Año Nuevo State Seashore, consisting of lands extending from Pillar Point to the City of Santa Cruz, and including the San Mateo Coast State Beaches, Año Nuevo State Reserve, Big Basin Redwoods State Park, and Natural Bridges State Beach, all within San Mateo and Santa Cruz Counties.

(6) (A) Monterey Bay State Seashore, consisting of lands extending from Natural Bridges State Beach south to Point Joe, including Lighthouse Fields, Twin Lakes, New Brighton State Beach, Seacliff, Manresa, Sunset, Zmudowski, Moss Landing, Salinas River, Marina, Monterey, and Asilomar, all within Santa Cruz and Monterey Counties.

(B) The department may establish a recreational trail system within the boundaries of the Monterey Bay State Seashore which is to be dedicated as the Sam Farr Recreational Trail System.

(7) San Luis Obispo State Seashore, consisting of lands extending from Cayucos to Lion's Head and including Cayucos State Beach, Morro Strand State Beach, Atascadero State Beach, Morro Bay State Park, Montana de Oro State Park, Avila State Beach, Pismo State Beach, Pismo Dunes State Vehicular Recreation Area and Point Sal State Beach, all within San Luis Obispo and Santa Barbara Counties.

(8) Santa Barbara Coast State Seashore, consisting of lands extending from Gaviota to Las Llagas Canyon, and including Gaviota State Park, Refugio State Beach, and El Capitan State Beach, all within Santa Barbara County.

(9) Point Mugu State Seashore, consisting of lands extending from Ormond Beach to San Nicholas Canyon, and including Mugu Lagoon, Point Mugu State Park, and Leo Carrillo State Beach, all within Ventura and Los Angeles Counties.

(10) Capistrano Coast State Seashore, consisting of lands extending from Newport Beach to San Mateo Point, and including Corona Del Mar State Beach, Irvine Coast, Doheny State Beach, and San Clemente State Beach, all within Orange County.

(11) San Diego Coast State Seashore, consisting of lands extending from San Onofre State Beach to La Jolla, and including San Onofre State Beach, Carlsbad State Beach, South Carlsbad State Beach, Leucadia State Beach, Moonlight State Beach, San Elijo State Beach, Cardiff State Beach, Torrey Pines State Beach, and Torrey Pines State Reserve, all within San Diego County.

(c) The department shall determine the precise boundaries of each state seashore, may revise those boundaries from time to time, shall identify additional lands appropriate for inclusion in state

seashores, and shall recommend land acquisitions for the establishment of additional state seashores or as additions to existing state seashores to the Governor and to the Legislature for inclusion in the annual Budget Bill.

(d) Section 5019.62 shall not apply to lands lying within the boundaries of state seashores established pursuant to this section until those lands have been acquired by the state and designated as state park system lands which are a part of a state seashore.

SEC. 1.5. Section 5001.6 of the Public Resources Code is amended to read:

5001.6. (a) Notwithstanding Section 5001.95, units of the state park system may be located within, and be a part of, a state seashore. However, any such unit shall be managed in accordance with its classification as provided in Section 5019.62.

(b) The following state seashores are hereby established consisting of appropriate coastal lands described in this subdivision together with any other lands that may, from time to time, be acquired by the state as an addition to these state seashores:

(1) Del Norte State Seashore, consisting of lands lying between Pyramid Point and Point Saint George, particularly lands to assure public access to, and scenic protection of, Pyramid Point; beach and dune lands, water-bottom and shoreline lands at Lake Earl, including Lake Talawa, all within Del Norte County.

(2) Clem Miller State Seashore, consisting of lands extending from the mouth of the Eel River to Pudding Creek at Fort Bragg, and including lands at Bear Harbor, Usal Creek, Cottoneva Creek, shore and upland additions to Westport-Union Landing State Beach, DeHaven Creek uplands, Ten Mile River estuary, and MacKerricher State Park, all within Humboldt and Mendocino Counties.

(3) Mendocino Coast State Seashore, consisting of lands extending from Jughandle Creek to the Gualala River, and including the Pygmy Forest Ecological Staircase, Russian Gulch State Park, Mendocino Headlands State Park, Van Damme State Park, Greenwood Creek Beach, Bowling Ball Beach and the Gualala River shoreline and estuary, all within Mendocino County.

(4) Sonoma Coast State Seashore, consisting of lands extending from the Gualala River to Bodega Head, and including the Kruse Rhododendron State Reserve, Salt Point State Park, Fort Ross State Historic Park, and Sonoma Coast State Beach, all within Sonoma County.

(5) Año Nuevo State Seashore, consisting of lands extending from Pillar Point to the City of Santa Cruz, and including the San Mateo Coast State Beaches, Año Nuevo State Reserve, Big Basin Redwoods State Park, and Natural Bridges State Beach, all within San Mateo and Santa Cruz Counties.

(6) (A) Monterey Bay State Seashore, consisting of lands extending from Natural Bridges State Beach south to Point Joe, including Lighthouse Fields, Twin Lakes, New Brighton State Beach, Seacliff, Manresa, Sunset, Zmudowski, Moss Landing, Salinas River,

Marina, Monterey, and Asilomar, all within Santa Cruz and Monterey Counties.

(B) The department may establish a recreational trail system within the boundaries of the Monterey Bay State Seashore which is to be dedicated as the Sam Farr Recreational Trail System.

(7) San Luis Obispo State Seashore, consisting of lands extending from Cayucos to Lion's Head and including Cayucos State Beach, Morro Strand State Beach, Atascadero State Beach, Morro Bay State Park, Montana de Oro State Park, Avila State Beach, Pismo State Beach, Pismo Dunes State Vehicular Recreation Area and Point Sal State Beach, all within San Luis Obispo and Santa Barbara Counties.

(8) Santa Barbara Coast State Seashore, consisting of lands extending from Gaviota to Las Llagas Canyon, and including Gaviota State Park, Refugio State Beach, and El Capitan State Beach, all within Santa Barbara County.

(9) Point Mugu State Seashore, consisting of lands extending from Ormond Beach to San Nicholas Canyon, and including Mugu Lagoon, Point Mugu State Park, and Leo Carrillo State Beach, all within Ventura and Los Angeles Counties.

(10) Capistrano Coast State Seashore, consisting of lands extending from Newport Beach to San Mateo Point, and including Corona Del Mar State Beach, Irvine Coast, Doheny State Beach, and San Clemente State Beach, all within Orange County.

(11) (A) San Diego Coast State Seashore, consisting of lands extending from San Onofre State Beach to La Jolla, and including San Onofre State Beach, Carlsbad State Beach, Robert C. Frazee State Beach, South Carlsbad State Beach, Leucadia State Beach, Moonlight State Beach, San Elijo State Beach, Cardiff State Beach, Torrey Pines State Beach, and Torrey Pines State Reserve, all within San Diego County.

(B) That section of Carlsbad State Beach within the San Diego Coast State Seashore which is located north of Agua-Hedionda Lagoon is hereby renamed Robert C. Frazee State Beach.

(c) The department shall determine the precise boundaries of each state seashore, may revise those boundaries from time to time, shall identify additional lands appropriate for inclusion in state seashores, and shall recommend land acquisitions for the establishment of additional state seashores or as additions to existing state seashores to the Governor and to the Legislature for inclusion in the annual Budget Bill.

(d) Section 5019.62 shall not apply to lands lying within the boundaries of state seashores established pursuant to this section until such lands have been acquired by the state and designated as state park system lands which are a part of a state seashore.

SEC. 2. In accordance with subdivision (a) of Section 5096.237 of the Public Resources Code and subdivision (a) of Section 5626 of the Public Resources Code, the City of Reedley may convert to a different nonrecreational use not more than 9.2 acres of parkland at the property known as Columbia Park that was acquired, in part,

with state grant funds provided under the Parklands Acquisition and Development Program of 1984 and the Roberti-Z'Berg-Harris Urban Open-Space and Recreation Program, appropriated pursuant to Item 3790-101-722 (1) of Section 2 of the Budget Act of 1984, (Chapter 258, Statutes of 1984), or may sell that parkland, if all of the following conditions are met:

(a) The City of Reedley acquires substitute parkland and recreational facilities of at least equal total area or greater fair market value and recreational utility than the converted parkland.

(b) The City of Reedley provides the Department of Parks and Recreation with appraisals of both the parkland to be converted and the recreational facilities to be substituted for the parkland for the department's review and approval.

(c) The City of Reedley submits to the Department of Parks and Recreation copies of the preliminary title report for the land to be substituted for the parkland at Columbia Park.

(d) The City of Reedley complies with the Public Park Preservation Act of 1971 (Chapter 2.5 (commencing with Section 5400) of Division 5) of the Public Resources Code.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 5001.6 of the Public Resources Code proposed by both this bill and SB 1585. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 5001.6 of the Public Resources Code, and (3) this bill is enacted after SB 1585, in which case Section 1 of this bill shall not become operative.

CHAPTER 745

An act to amend Section 12005 of the Fish and Game Code, relating to fish and wildlife.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 12005 of the Fish and Game Code is amended to read:

12005. (a) Notwithstanding Section 12000, the maximum punishment for each violation of Section 4758, except as otherwise provided in subdivision (c), is a fine of five thousand dollars ($5,000), imprisonment in the state prison or the county jail for not more than one year, or both the fine and imprisonment.

(b) If the conviction is for the possession of two bear gall bladders and probation is granted, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that a minimum term of 30 days shall be served in the county jail.

(c) The possession of three or more bear gall bladders is punishable by a fine of not more than ten thousand dollars ($10,000), imprisonment in the county jail for not more than one year, or both that fine and imprisonment. If probation is granted, or the execution or imposition of sentence is suspended, it shall be a condition thereof that a minimum term of three months shall be served in the county jail.

(d) Consecutive sentences shall be imposed for separate violations of this section.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 746

An act to amend Sections 4582.8, 4584, and 4592 of, and to add Section 4584.5 to, the Public Resources Code, relating to forest resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 4582.8 of the Public Resources Code is amended to read:

4582.8. Within 10 days from the date that a timber harvesting plan is determined to be in conformance under Section 4582.7, or within 10 days from the date of receipt of a notice of timber operations, a nonindustrial timber harvest notice, a notice of exemption to convert less than three acres to a nontimber use pursuant to Section 4584, or an emergency notice filed pursuant to Section 4592, the director shall transmit copies thereof to the State Board of Equalization.

SEC. 2. Section 4584 of the Public Resources Code is amended to read:

4584. Upon determining that the exemption is consistent with the purposes of this chapter, the board may exempt from this chapter or portions thereof, any person engaged in forest management whose activities are limited to any of the following:

(a) The cutting or removal of trees for the purpose of constructing or maintaining a right-of-way for utility lines.

(b) The planting, growing, nurturing, shaping, shearing, removal, or harvest of immature trees for Christmas trees or other ornamental purposes or minor forest products, including fuelwood.

(c) The cutting or removal of dead, dying, or diseased trees of any size.

(d) Site preparation.

(e) Maintenance of drainage facilities and soil stabilization treatments.

(f) Timber operations on land managed by the Department of Parks and Recreation.

(g) The one-time conversion of less than three acres to a nontimber use.

(h) Easements granted by a right-of-way construction agreement administered by the federal government if any timber sales and operations within or affecting these areas are reviewed and conducted pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).

(i) The cutting, removal, or sale of timber or other solid wood forest products from the species Taxus brevifolia (Pacific yew), provided that the known locations of any stands of this species three inches and larger in diameter at breast height are identified in the exemption notice submitted to the department. Nothing in this subdivision is intended to authorize the peeling of bark from, or the cutting or removal of, Taxus brevifolia within a watercourse and lake protection zone, special treatment area, buffer zone, or other area where timber harvesting is prohibited or otherwise restricted pursuant to board rules.

(j) (1) The cutting or removal of trees in compliance with Sections 4290 and 4291 which eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuelbreak for a distance of not more than 150 feet on each side from an approved and permitted Group R occupancy, as defined in the Uniform Building Code and adopted in Part 2 (commencing with Section 1201) of Title 24 of the California Code of Regulations, when that cutting or removal is conducted in compliance with this subdivision.

(2) (A) The cutting or removal of trees pursuant to this subdivision shall be limited to cutting or removal that will result in a reduction in the rate of fire spread, fire duration and intensity, fuel ignitability, or ignition of the tree crowns and shall be in accordance with any regulations adopted by the board pursuant to this section.

(B) Trees may not be cut or removed pursuant to this subdivision by the clearcutting regeneration method, by the seed tree removal step of the seed tree regeneration method, or by the shelterwood removal step of the shelterwood regeneration method.

(3) (A) Surface fuels, including logging slash and debris, low

brush, and deadwood which could promote the spread of wildfire shall be chipped, burned, or otherwise removed from all areas of timber operations within 45 days from the date of commencement of timber operations pursuant to this subdivision.

(B) (i) All surface fuels, that are not chipped, burned, or otherwise removed from all areas of timber operations within 45 days from the date of commencement of timber operations may be determined to be a nuisance and subject to abatement by the department or the city or county having jurisdiction.

(ii) The costs incurred by the department, city, or county, as the case may be, to abate the nuisance upon any parcel of land subject to the timber operations, including, but not limited to, investigation, boundary determination, measurement, and other related costs, may be recovered by special assessment and lien against the parcel of land by the department, city, or county. The assessment may be collected at the same time and in the same manner as ordinary ad valorem taxes, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as is provided for ad valorem taxes.

(4) All timber operations conducted pursuant to this subdivision shall conform to applicable city or county general plans, city or county implementing ordinances, and city or county zoning ordinances. Nothing in this paragraph is intended to authorize the cutting, removal, or sale of timber or other solid wood forest products within an area where timber harvesting is prohibited or otherwise restricted pursuant to the rules or regulations adopted by the board.

(5) (A) The board shall adopt regulations, initially as emergency regulations in accordance with subparagraph (B), that the board considers necessary to implement and to obtain compliance with this subdivision.

(B) The emergency regulations adopted pursuant to subparagraph (A) shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

SEC. 3. Section 4584.5 is added to the Public Resources Code, to read:

4584.5. Nothing in Section 4584 shall exempt the owner of any timber harvested from registering with the State Board of Equalization or from the payment of any applicable timber yield taxes imposed pursuant to Section 38115 of the Revenue and Taxation Code.

SEC. 4. Section 4592 of the Public Resources Code is amended to read:

4592. Notwithstanding any other provisions of this chapter, a registered professional forester may in an emergency, on behalf of a timber owner or operator, file an "emergency notice" with the

department that shall allow immediate commencement of timber operations. The emergency notice shall include a declaration, under penalty of perjury, that a bona fide emergency exists which requires immediate harvest activities, and that any applicable timber yield taxes will be paid pursuant to Section 38115 of the Revenue and Taxation Code. Those emergencies shall be defined by the board and may include, but are not limited to, the necessity to harvest to remove fire-killed or damaged timber or insect or disease-infested timber, or to undertake emergency repairs to roads.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Due to prolonged drought conditions, the wildlands of the state are facing an unusually severe fire season and have experienced numerous damaging wildfires earlier than normal. It is important that the process of fire threat reduction be made as expeditious as possible, while ensuring that appropriate taxes imposed on timber yields are collected. In order to streamline the ability of homeowners and others to clear firebreaks and remove flammable vegetation and trees posing a fire threat to structures, and in order to ensure the collection of timber yield taxes on timber operations exempted from preparing timber harvesting plans, it is necessary that this act take effect immediately.

CHAPTER 747

An act to add Section 87406.1 to the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 21, 1994. Filed with Secretary of State September 22, 1994.]

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

SECTION 1. Section 87406.1 is added to the Government Code, to read:

87406.1. (a) For purposes of this section, "district" means an air

pollution control district or air quality management district and "district board" means the governing body of an air pollution control district or an air quality management district.

(b) No former member of a district board, and no former officer or employee of a district who held a position which entailed the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest, shall, for a period of one year after leaving that office or employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, that district board, or any committee, subcommittee, or present member of that district board, or any officer or employee of the district, if the appearance or communication is made for the purpose of influencing regulatory action.

(c) Subdivision (b) shall not apply to any individual who is, at the time of the appearance or communication, a board member, officer, or employee of another district or an employee or representative of a public agency.

(d) This section applies to members and former members of district hearing boards.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 3. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 748

An act to amend Sections 17052.17 and 23617 of, and to amend, add, and repeal Sections 17052.18 and 23617.5 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 22, 1994. Filed with Secretary of State September 23, 1994.]

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

SECTION 1. Section 17052.17 of the Revenue and Taxation Code is amended to read:

17052.17. (a) For each taxable year beginning on or after January 1, 1988, and before January 1, 1998, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of any of the following:

(A) The cost paid or incurred by the taxpayer on or after September 23, 1988, for the startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of the taxpayer's employees.

(B) For each taxable year beginning on or after January 1, 1993, the cost paid or incurred by the taxpayer for the startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of employees of tenants leasing commercial or office space in a building owned by the taxpayer.

(C) The cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to California child care information and referral services, including, but not limited to, those that identify local child care services, offer information describing these resources to the taxpayer's employees, and make referrals of the taxpayer's employees to child care services where there are vacancies.

In the case of a child care facility established by two or more taxpayers, the credit shall be allowed to each taxpayer if the facility is to be used primarily by the children of the employees of each of the taxpayers or the children of the employees of the tenants of each of the taxpayers.

(2) The amount of the credit allowed by this section shall not exceed fifty thousand dollars ($50,000) for any taxable year.

(c) For purposes of this section, "startup expenses" include, but are not limited to, feasibility studies, site preparation, and construction, renovation or acquisition of facilities for purposes of establishing or expanding onsite or nearsite centers by one or more employers or one or more building owners leasing space to employers.

(d) If two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive a tax credit with respect to his, her, or its respective share of the costs paid or incurred.

(e) (1) In the case where the credit allowed and limited under subdivision (b) exceeds the "net tax," the excess may be carried over

to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted. However, the excess from any one year shall not exceed fifty thousand dollars ($50,000).

(2) If the credit carryovers from preceding taxable years allowed under paragraph (1) plus the credit allowed for the taxable year under subdivision (b) would exceed an aggregate total of fifty thousand dollars ($50,000), then the credit allowed to reduce the "net tax" under this section for the taxable year shall be limited to fifty thousand dollars ($50,000) and the amount in excess of the fifty thousand dollar ($50,000) limit may be carried over and applied against the "net tax" in the following year, and succeeding years if necessary, in an amount which, when added to the credit allowed under subdivision (b) for that succeeding taxable year, does not exceed fifty thousand dollars ($50,000).

(f) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year which is equal to the amount of the credit allowed under this section attributable to those expenses.

(g) In lieu of claiming the tax credit provided by this section, the taxpayer may elect to take depreciation pursuant to Section 17250. In addition, the taxpayer may take depreciation pursuant to that section for the cost of a facility in excess of the amount of the tax credit claimed under this section.

(h) The basis for any child care facility for which a credit is allowed shall be reduced by the amount of the credit attributable to the facility. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(i) No credit shall be allowed under subparagraph (B) of paragraph (1) of subdivision (b) in the case of any taxpayer that is required by any local ordinance or regulation to provide a child care facility.

(j) (1) In order to be eligible for the credit allowed under subparagraph (A) or (B) of paragraph (1) of subdivision (b), the taxpayer shall submit to the Franchise Tax Board upon request a statement certifying that the costs for which the credit is claimed are incurred with respect to the startup expenses of establishing a child care program or constructing a child care facility in California to be used primarily by the children of the taxpayer's employees or the children of the employees of tenants leasing commercial or office space in a building owned by the taxpayer and which will be in operation for at least 60 consecutive months after completion.

(2) If the child care center for which a credit is claimed pursuant to this section is disposed of or ceases to operate within 60 months after completion, that portion of the credit claimed which represents the remaining portion of the 60-month period shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(k) In order to be allowed the credit under subparagraph (A) or (B) of paragraph (1) of subdivision (b), the taxpayer shall indicate,

in the form and manner prescribed by the Franchise Tax Board, the number of children that the child care program or facility will be able to legally accommodate.

(*l*) This section shall remain in effect only until December 1, 1998, and as of that date is repealed.

SEC. 2. Section 17052.18 of the Revenue and Taxation Code is amended to read:

17052.18. (a) For each taxable year beginning on or after January 1, 1988, and before January 1, 1995, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 50 percent of the cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to a qualified care plan made on behalf of any qualified dependent of the taxpayer's qualified employee.

(2) The amount of the credit allowed by this section in any taxable year shall not exceed six hundred dollars ($600) for each qualified dependent.

(c) For purposes of this section:

(1) "Qualified care plan" means a plan providing qualified care.

(2) "Qualified care" includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, and a dependent care center as defined by Section 21(b)(2)(D) of the Internal Revenue Code that is a specialized center with respect to short-term illnesses of an employee's dependents. "Qualified care" must be provided in this state under the authority of a license when required by California law.

(3) "Specialized center" means a facility that provides care to mildly ill children and that may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross-infection.

(4) "Contributions" include employer reimbursements to employees for the employee's qualified care expenses, or direct payments to child care programs or providers, or both.

(5) "Qualified employee" means any employee of the taxpayer who is performing services for the taxpayer in this state, within the meaning of Section 25133, during the period in which the qualified care is performed.

(6) "Employee" includes an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(7) "Qualified dependent" means any dependent of a qualified

employee who is under the age of 15 years.

(d) In the case where an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children.

(e) In the case where the child care received is of less than 42-week duration, the employer shall claim a prorated portion of the allowable credit. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under paragraph (1) of subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year that is equal to the amount of the credit allowed under this section.

(j) In the case where the credit is taken by an employer for contributions to a qualified care plan that is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(k) This section shall remain in effect only until December 1, 1995, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f), until the credit has been exhausted.

SEC. 3. Section 17052.18 is added to the Revenue and Taxation Code, to read:

17052.18. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 1998, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of the cost paid or incurred by the taxpayer for contributions to a qualified care plan made on behalf of any qualified dependent of the taxpayer's qualified employee.

(2) The amount of the credit allowed by this section in any taxable

year shall not exceed three hundred sixty dollars ($360) for each qualified dependent.

(c) For purposes of this section:

(1) "Qualified care plan" means a plan providing qualified care.

(2) "Qualified care" includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, and a dependent care center as defined by Section 21(b)(2)(D) of the Internal Revenue Code that is a specialized center with respect to short-term illnesses of an employee's dependents. "Qualified care" must be provided in this state under the authority of a license when required by California law.

(3) "Specialized center" means a facility that provides care to mildly ill children and that may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross-infection.

(4) "Contributions" include direct payments to child care programs or providers.

(5) "Qualified employee" means any employee of the taxpayer who is performing services for the taxpayer in this state, within the meaning of Section 25133, during the period in which the qualified care is performed.

(6) "Employee" includes an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(7) "Qualified dependent" means any dependent of a qualified employee who is under the age of 12 years.

(d) In the case where an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children.

(e) In the case where the child care received is of less than 42-week duration, the employer shall claim a prorated portion of the allowable credit. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under paragraph (1) of subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year that is equal to the amount of the credit allowed under this section.

(j) In the case where the credit is taken by an employer for contributions to a qualified care plan that is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(k) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f), until the credit has been exhausted.

SEC. 4. Section 23617 of the Revenue and Taxation Code is amended to read:

23617. (a) For each income year beginning on or after January 1, 1988, and before January 1, 1998, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of any of the following:

(A) The cost paid or incurred by the taxpayer on or after September 23, 1988, for the startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of the taxpayer's employees.

(B) For each income year beginning on or after January 1, 1993, cost paid or incurred by the taxpayer for startup expenses of establishing a child care program or constructing a child care facility in California to be used primarily by the children of employees of tenants leasing commercial or office space in a building owned by the taxpayer.

(C) The cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to California child care information and referral services, including, but not limited to, those that identify local child care services, offer information describing these resources to the taxpayer's employees, and make referrals of the taxpayer's employees to child care services where there are vacancies.

In the case of a child care facility established by two or more taxpayers, the credit shall be allowed if the facility is to be used primarily by the children of the employees of each of the taxpayers or the children of the employees of tenants of each of the taxpayers.

(2) The amount of the credit allowed by this section shall not exceed fifty thousand dollars ($50,000) for any income year.

(c) For purposes of this section, "startup expenses" include, but are not limited to, feasibility studies, site preparation, and construction, renovation, or acquisition of facilities for purposes of establishing or expanding onsite or nearsite centers by one or more employers or one or more building owners leasing space to employers.

(d) If two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive a tax credit with respect to its respective share of the costs paid or incurred.

(e) (1) In the case where the credit allowed and limited under subdivision (b) for the income year exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted. However, the excess from any one year shall not exceed fifty thousand dollars ($50,000).

(2) If the credit carryovers from preceding income years allowed under paragraph (1) plus the credit allowed for the income year under subdivision (b) would exceed an aggregate total of fifty thousand dollars ($50,000), then the credit allowed to reduce the "tax" under this section for the income year shall be limited to fifty thousand dollars ($50,000) and the amount in excess of the fifty thousand dollar ($50,000) limit may be carried over and applied against the "tax" in the following year, and succeeding years if necessary, in an amount which, when added to the credit allowed under subdivision (b) for that succeeding income year, does not exceed fifty thousand dollars ($50,000).

(f) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the income year which is equal to the amount of the credit allowed under this section attributable to those expenses.

(g) In lieu of claiming the tax credit provided by this section, the taxpayer may elect to take depreciation pursuant to Section 24371.5. In addition, the taxpayer may take depreciation pursuant to that section for the cost of a facility in excess of the amount of the tax credit claimed under this section.

(h) The basis for any child care facility for which a credit is allowed shall be reduced by the amount of the credit attributable to the facility. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(i) No credit shall be allowed under subparagraph (B) of paragraph (1) of subdivision (b) in the case of any taxpayer that is required by any local ordinance or regulation to provide a child care facility.

(j) (1) In order to be eligible for the credit allowed under subparagraph (A) or (B) of paragraph (1) of subdivision (b), the taxpayer shall submit to the Franchise Tax Board upon request a

statement certifying that the costs for which the credit is claimed are incurred with respect to the startup expenses of establishing a child care program or constructing a child care facility in California to be used primarily by the children of the taxpayer's employees or the children of the employees of tenants leasing commercial or office space in a building owned by the taxpayer and which will be in operation for at least 60 consecutive months after completion.

(2) If the child care center for which a credit is claimed pursuant to this section is disposed of or ceases to operate within 60 months after completion, that portion of the credit claimed which represents the remaining portion of the 60-month period shall be added to the taxpayer's tax liability in the income year of that disposition or nonuse.

(k) In order to be allowed the credit under subparagraph (A) or (B) of paragraph (1) of subdivision (b), the taxpayer shall indicate, in the form and manner prescribed by the Franchise Tax Board, the number of children that the child care program or facility will be able to legally accommodate.

(*l*) This section shall remain in effect only until December 1, 1998, and as of that date is repealed.

SEC. 5. Section 23617.5 of the Revenue and Taxation Code is amended to read:

23617.5. (a) For each income year beginning on or after January 1, 1988, and before January 1, 1995, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 50 percent of the cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to a qualified care plan made on behalf of any qualified dependent of the taxpayer's qualified employee.

(2) The amount of the credit allowed by this section in any income year shall not exceed six hundred dollars ($600) for each qualified dependent.

(c) For purposes of this section:

(1) "Qualified care plan" means a plan providing qualified care.

(2) "Qualified care" includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, and a dependent care center as defined by Section 21(b)(2)(D) of the Internal Revenue Code that is a specialized center with respect to short-term illnesses of an employee's dependents. "Qualified care" must be provided in this state under the authority of a license when required by California law.

(3) "Specialized center" means a facility that provides care to mildly ill children and that may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor

problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross-infection.

(4) "Contributions" include employer reimbursements to employees for the employee's qualified care plan expenses, or direct payments to child care programs or providers, or both.

(5) "Qualified employee" means any employee of the taxpayer who is performing services for the taxpayer in this state, within the meaning of Section 25133, during the period in which the qualified care is performed.

(6) "Employee" includes an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(7) "Qualified dependent" means any dependent of a qualified employee who is under the age of 15 years.

(d) In the case where an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children served in the facility from taxpayers claiming credits under this section.

(e) In the case where the child care received is of less than 42-week duration, the employer shall claim a prorated portion of the allowable credit. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) In the case where the credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under paragraph (1) of subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the income year that is equal to the amount of the credit allowed under this section.

(j) In the case where the credit is taken by an employer for contributions to a qualified care plan that is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the

income year for which the credit is allowed.

(k) This section shall remain in effect only until December 1, 1995, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f), until the credit has been exhausted.

SEC. 6. Section 23617.5 is added to the Revenue and Taxation Code, to read:

23617.5. (a) For each income year beginning on or after January 1, 1995, and before January 1, 1998, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of the cost paid or incurred by the taxpayer for contributions to a qualified care plan made on behalf of any qualified dependent of the taxpayer's qualified employee.

(2) The amount of the credit allowed by this section in any income year shall not exceed three hundred sixty dollars ($360) for each qualified dependent.

(c) For purposes of this section:

(1) "Qualified care plan" means a plan providing qualified care.

(2) "Qualified care" includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, and a dependent care center as defined by Section 21(b)(2)(D) of the Internal Revenue Code that is a specialized center with respect to short-term illnesses of an employee's dependents. "Qualified care" must be provided in this state under the authority of a license when required by California law.

(3) "Specialized center" means a facility that provides care to mildly ill children and that may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross-infection.

(4) "Contributions" include direct payments to child care programs or providers.

(5) "Qualified employee" means any employee of the taxpayer who is performing services for the taxpayer in this state, within the meaning of Section 25133, during the period in which the qualified care is performed.

(6) "Employee" includes an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(7) "Qualified dependent" means any dependent of a qualified employee who is under the age of 12 years.

(d) In the case where an employer makes contributions to a

qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children served in the facility from taxpayers claiming credits under this section.

(e) In the case where the child care received is of less than 42-week duration, the employer shall claim a prorated portion of the allowable credit. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) In the case where the credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under paragraph (1) of subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the income year that is equal to the amount of the credit allowed under this section.

(j) In the case where the credit is taken by an employer for contributions to a qualified care plan that is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the income year for which the credit is allowed.

(k) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f), until the credit has been exhausted.

SEC. 7. The Legislature finds and declares that the amendments to Sections 17052.17, 17052.18, 23617, and 23617.5 of the Revenue and Taxation Code made by Sections 1, 2, 4, and 5 of this act do not constitute a change in, but are declaratory of, existing law.

SEC. 8. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 749

An act to amend Sections 63000, 63002, 63010, 63020, 63021, 63022, 63023, 63024, 63025, 63026, 63031, 63035, 63040, 63041, 63050, 63052, 63053, 63056, 63060, 63061, 63063, 63070, 63071, 63073, 63074, 63075, and 63079 of, to amend the heading of Article 3 (commencing with Section 63040) of Chapter 2 of Division 1 of Title 6.7 of, to amend the headings of Chapter 2 (commencing with Section 63020), Chapter 3 (commencing with Section 63050), and Chapter 5 (commencing with Section 63070) of Division 1 of Title 6.7 of, to amend the heading of Division 1 (commencing with Section 63000) of Title 6.7 of, to add Sections 63022.5, 63023.1, and 63025.1 to, to add Article 4 (commencing with Section 63042) and Article 5 (commencing with Section 63043) to Chapter 2 of Division 1 of Title 6.7 of, and to repeal Sections 63042 and 63051 of, the Government Code, and to amend Section 50902 of the Health and Safety Code, relating to infrastructure financing.

[Approved by Governor September 22, 1994. Filed with Secretary of State September 23, 1994.]

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

SECTION 1. The heading of Division 1 (commencing with Section 63000) of Title 6.7 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

DIVISION 1. THE BERGESON-PEACE INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK ACT

SEC. 2. Section 63000 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63000. The Legislature finds and declares the following:

(a) Economic revitalization, future development, and a healthy climate for jobs in California will depend upon a well-conceived system of public improvements that are essential to the economic well-being of the citizens of the state and are necessary to maintain, as well as create, employment within the state for business.

(b) It is necessary for public policy to support the efforts of businesses attempting to expand, businesses seeking to locate in California, and local economic development organizations, public agencies, and new entrepreneurs by dedicating public fiscal resources to confront obstacles and barriers that impede economic growth.

(c) Existing mechanisms that coordinate federal, state, local, and private financial resources are inadequate to attract and sustain that level of private investment that is essential to a growth economy.

(d) The high cost and limited availability of loans and capital has led a number of states to take action to remedy these conditions

through concerted public and private investment programs that include efforts to do the following:

(1) Use the state's access to capital markets more effectively for economic development.

(2) Create financing pools to access national capital markets or help government sponsors and public-private economic development organizations obtain credit enhancement on their own.

(3) Facilitate credit enhancement for selected specific projects.

(4) Provide or arrange for loan insurance.

(5) Create and support secondary markets for loan portfolios of urban and rural economic development corporations and others.

(6) Improve access to international capital markets.

(7) Provide opportunities for public pension funds and other institutional investors to play a larger role in state economic development.

(8) Arrange for or provide subordinated debt for selected projects.

(9) Increase support for local infrastructure development.

(e) Local governments in California bear a primary responsibility for the business of promoting job creation and economic development efforts. California's continued reliance on autonomous local entities often fails to adequately consider regional impacts of business expansion. Projects of a regional nature need the benefit of a state coordinating function to augment and enhance local economic development and environmental efforts.

(f) The State of California has not embarked on a major infrastructure financing effort since the decade of the 1960's, despite persistent unemployment and soaring population growth.

(g) California's ability to compete in a global economy depends upon its capacity to implement policies that take maximum advantage of public and private resources at the local, regional, state, and national levels. These policies should be coordinated with any future legislative plan involving growth management strategies designed to make economic growth compatible with environmental protections. It is the intent of the Legislature in enacting this act to create a mechanism to finance projects needed to implement economic development and job creation and growth management strategies, and to provide a secure and stable funding source for implementation of this act in order to meet critical economic, social, and environmental concerns.

(h) The State of California needs a financing entity structured with broad authority to issue bonds, provide guarantees, and leverage state and federal funds using techniques that will target public investment to facilitate economic development. The goal is to produce more private sector jobs with less public sector investment.

(i) The mechanisms for financing public improvements and private job creation strategies provided for in this act are in the public interest, serve a public purpose, and will promote the health,

welfare, and safety of the citizens of the state.

(j) The public policies and responsibilities of the state, including all of the above purposes and functions, cannot be fully obtained without the use of financing assistance and can be most effectively furthered by the creation of the California Infrastructure and Economic Development Bank.

SEC. 3. Section 63002 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63002. This division shall be known and may be cited as the Bergeson-Peace Infrastructure and Economic Development Bank Act.

SEC. 4. Section 63010 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63010. For purposes of this division, the following words and terms shall have the following meanings unless the context clearly indicates or requires another or different meaning or intent:

(a) "Act" means the Bergeson-Peace Infrastructure and Economic Development Bank Act.

(b) "Agency" means the California Housing and Infrastructure Finance Agency, created pursuant to Part 3 (commencing with Section 50900) of Division 31 of the Health and Safety Code, and any board, commission, department, or officer succeeding to the functions thereof, or to whom the powers conferred upon the agency by this division shall be given by law. For purposes of the state General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2), the agency shall be deemed to be the committee.

(c) "Bank" means the California Infrastructure and Economic Development Bank.

(d) "Board" means the board of directors of the California Housing and Infrastructure Finance Agency.

(e) "Bond purchase agreement" means a contractual agreement executed between the bank and a sponsor whereby the bank agrees to purchase bonds of the sponsor.

(f) "Bonds" means bonds, notes (including bond, revenue, tax or grant anticipation notes), commercial paper, floating rate, and variable maturity securities, and any other evidences of indebtedness, including certificates of participation, or lease-purchase agreements, whether taxable or excludable from gross income for federal income taxation purposes.

(g) "Cost," as applied to a project or portion thereof financed under this division, means all or any part of the cost of construction, renovation, and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, licenses, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved; the cost of all machinery, equipment, and financing charges; interest prior to, during, and for a period after, completion

of construction, renovation, or acquisition, as determined by the bank; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; the cost of architectural, engineering, financial and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incidental to determining the feasibility of any project or incidental to the construction, acquisition, or financing of any project.

(h) "Executive director" means the executive director of the agency appointed pursuant to Section 50908 of the Health and Safety Code.

(i) "Facilities" means real and personal property, structures, conveyances, equipment, thoroughfares, buildings, and supporting components thereof that are directly related to providing the following:

(1) "City streets" includes any street, avenue, boulevard, road, parkway, drive, or other way that is any of the following:

(A) An existing municipal roadway.

(B) Is shown upon a plat approved pursuant to law and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, bridges, shoulders, gutters, curbs, guardrails, sidewalks, parking areas, benches, fountains, plantings, lighting systems, and other areas within the street lines as well as equipment and facilities used in the cleaning, grading, clearance, maintenance, and upkeep thereof.

(2) "County highways" includes any county highway as defined in Section 25 of the Streets and Highways Code, that includes the land between the highway lines, whether improved or unimproved, and may comprise pavement, bridges, shoulders, gutters, curbs, guardrails, sidewalks, parking areas, benches, fountains, plantings, lighting systems, and other areas within the street lines, as well as equipment and facilities used in the cleaning, grading, clearance, maintenance, and upkeep thereof.

(3) "Drainage and flood control" includes ditches, canals, levees, pumps, dams, conduits, pipes, storm sewers, and dikes necessary to keep or direct water away from people, equipment, buildings, and other protected areas as may be established by lawful authority, as well as the acquisition, improvement, maintenance, and management of floodplain areas and all equipment used in the maintenance and operation of the foregoing.

(4) "Educational facilities" includes libraries, child care facilities, including, but not limited to, day care facilities, and employment training facilities.

(5) "Environmental mitigation measures" includes required construction or modification of public infrastructure and purchase and installation ofpollution control and noise abatement equipment.

(6) "Parks and recreational facilities" includes local parks, recreational property and equipment, parkways and property.

(7) "Port facilities" includes docks, harbors, ports of entry, piers,

ships, small boat harbors and marinas, and any other facilities, additions, or improvements in connection therewith.

(8) "Communications" includes facilities for telephone and telecommunications service.

(9) "Public transit" includes air and rail transport of goods, airports, guideways, vehicles, rights-of-way, passenger stations, maintenance and storage yards, and related structures, including public parking facilities, equipment used to provide or enhance transportation by bus, rail, ferry, or other conveyance, either publicly or privately owned, that provides to the public general or special service on a regular and continuing basis.

(10) "Sewage collection and treatment" includes pipes, pumps, and conduits that collect wastewater from residential, manufacturing, and commercial establishments, the equipment, structures, and facilities used in treating wastewater to reduce or eliminate impurities or contaminants, and the facilities used in disposing of, or transporting, remaining sludge, as well as all equipment used in the maintenance and operation of the foregoing.

(11) "Solid-waste collection and disposal" includes vehicles, vehicle-compatible waste receptacles, transfer stations, recycling centers, sanitary landfills, and waste conversion facilities necessary to remove solid waste, except that which is hazardous as defined by law, from its point of origin.

(12) "Water treatment and distribution" includes facilities in which water is purified and otherwise treated to meet residential, manufacturing, or commercial purposes and the conduits, pipes, and pumps that transport it to places of use.

(13) "Defense conversion" includes, but is not limited to, facilities necessary for successfully converting military bases consistent with an adopted base reuse plan.

(14) "Public safety facilities" includes, but is not limited to, police stations, fire stations, court buildings, jails, juvenile halls, and juvenile detention facilities.

(j) "Financial assistance" in connection with a project, includes, but is not limited to, any combination of grants, loans, the proceeds of bonds, insurance, guarantees or other credit enhancements or liquidity facilities, and contributions of money, property, labor, or other things of value, as may be approved by resolution of the board or the sponsor, or both; the purchase of bonds of a sponsor by the bank or the issuance of bank bonds used to fund the cost of a project for which a sponsor is directly or indirectly liable, including, but not limited to, bonds, the security for which is provided in whole or in part pursuant to the powers granted by Section 63025; bonds for which the bank has provided a guarantee or enhancement pursuant to Chapter 4 (commencing with Section 63060); or any other type of assistance deemed appropriate by the bank or the sponsor, except that no direct loans shall be made to nonpublic entities.

For purposes of this subdivision, "grant" does not include grants made by the bank except when acting as an agent or intermediary

for the distribution or packaging of financing available from federal, private, or other public sources.

(k) "Guarantee trust fund" means the California Infrastructure Guarantee Trust Fund.

(*l*) "Infrastructure bank fund" means the California Infrastructure and Economic Development Bank Fund.

(m) "Loan agreement" means a contractual agreement executed between the bank and a sponsor that provides that the bank will loan funds to the sponsor and that the sponsor will repay the principal and pay the interest and redemption premium, if any, on the loan.

(n) "Participating party" means any person, company, corporation, partnership, firm, or other entity or group of entities engaged in business within the state and that applies for financing from the bank in conjunction with a sponsor for the purpose of implementing a project.

(o) "Project" means designing, acquiring, planning, permitting, entitling, constructing, improving, extending, restoring, financing, and generally developing facilities within the state.

(p) "Revenues" means all receipts, purchase payments, loan repayments, lease payments, and all other income or receipts derived by the bank or a sponsor from the sale, lease, or other financing arrangement undertaken by the bank, a sponsor or a participating party, including, but not limited to, all receipts from a bond purchase agreement, and any income or revenue derived from the investment of any money in any fund or account of the bank or a sponsor. Revenues shall not include moneys in the General Fund of the state.

(q) "Sponsor" means any subdivision of the state or local government including departments, agencies, commissions, cities, counties, nonprofit corporations formed on behalf of a sponsor, special districts, assessment districts, and joint powers authorities within the state or any combination of these subdivisions that has, or proposes to acquire, an interest in a project and that makes application to the bank for financial assistance in connection with a project in a manner prescribed by the bank.

(r) "State" means the State of California.

SEC. 5. The heading of Chapter 2 (commencing with Section 63020) of Division 1 of Title 6.7 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

CHAPTER 2. CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK

SEC. 6. Section 63020 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63020. (a) This division assigns powers and duties to the California Housing and Infrastructure Finance Agency that are in addition to any other powers and duties provided by any other provision of law, including, but not limited to, all powers provided

by Part 3 (commencing with Section 50900) of Division 31 of the Health and Safety Code. These powers are incorporated into this division by reference, and made a part of the powers of the agency conferred by this division.

(b) No member of the agency shall participate in any agency action or attempt to influence any decision or recommendation by any employee of, or consultant to, the agency that involves a sponsor of which he or she is a representative, elected or appointed official, or in which the member or a member of his or her immediate family has a personal financial interest within the meaning of Section 87100. For purposes of this section, "immediate family" means the spouse, children, and parents of the member.

SEC. 7. Section 63021 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63021. (a) There is within the agency the California Infrastructure and Economic Development Bank which shall be responsible for administering the provisions of this division.

(b) The bank shall be under the direction of the executive director of the agency.

(c) A deputy director for infrastructure shall be appointed by the Governor, after consideration of the recommendation of the executive director, and shall serve at the pleasure of the executive director. The appointment shall be subject to confirmation by the Senate.

SEC. 8. Section 63022 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63022. The executive director shall manage and conduct the business and affairs of the bank, the infrastructure bank fund, and guarantee trust fund, subject to the direction of the board. Except as otherwise provided in this section, the board may assign to the executive director, by resolution, those duties generally necessary or convenient to carry out its powers and purposes under this chapter. Any action involving final approval of any bonds, notes, or loans shall require the approval of a majority of the members of the board. Subject to any conditions that the board may from time to time prescribe, the executive director may exercise any power, function, or duty conferred by law on the bank in connection with the administration, management, and conduct of the business and affairs of the bank, the infrastructure bank fund, and the guarantee trust fund.

SEC. 8.5. Section 63022.5 is added to the Government Code, to read:

63022.5. (a) The officers of the bank shall be subject to the same standards as are applicable to the officers and directors of the agency, including but not limited to, the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)) and the conflict of interest code adopted by the agency pursuant to Article 1 (commencing with Section 10001) of Chapter 1 of Division 2 of Title 25 of the California Code of Regulations, Sections 1090, 1091, 1091.5, and 1102, and the

applicable rules and standards of the Municipal Securities Rulemaking Board.

(b) The bank may purchase insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if the insurance permits recourse by the insurer against the fiduciary in the case of a breach fiduciary obligation by the fiduciary.

SEC. 9. Section 63023 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63023. In administering and directing the day-to-day operations of the agency in regard to this division, the executive director, or whoever he or she shall assign, may do any of the following if authorized by resolution of the board:

(a) Enter into contracts for investment, guarantee, or enhancement.

(b) Establish procedures, guidelines, criteria, terms, conditions, or other requirements of any contract, bond, grant, or program, as the case may be, in order to carry out the intents and purposes of the board in authorizing any bond, loan, or grant program pursuant to this division.

(c) Decline to guarantee any risk, or to enter into any contract, in which the minimum requirements of the guarantee trust fund or the infrastructure bank fund are not complied with.

(d) Reinsure any risk or any part of any risk.

(e) Make rules for payments through the infrastructure bank fund and the settlement of claims against the guarantee trust fund and determine to whom and through whom the payments are to be made.

(f) Enter into any contracts or obligations relating to the infrastructure bank fund and the guarantee trust fund.

(g) Invest and reinvest the moneys belonging to the infrastructure bank fund and the guarantee trust fund as provided by this division.

(h) Enter into any contract or agreement, execute any instrument, conduct all business and affairs, and perform all acts relating to the infrastructure bank fund and the guarantee trust fund whether or not specifically designated in this division.

SEC. 9.5. Section 63023.1 is added to the Government Code, to read:

63023.1. The board may delegate to the executive director, or whomever he or she shall assign, the authority to execute a contract or agreement, execute an instrument, conduct all business and affairs, and perform all acts relating to the infrastructure bank fund and the guarantee trust fund.

SEC. 9.7. Section 63024 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63024. The executive director may contract with the Trade and Commerce Agency, the Department of Finance, the State Department of Health Services, the Department of Transportation,

the Department of Water Resources, the California Integrated Waste Management Board, the State Water Resources Control Board, the Governor's Office of Planning and Research, and any other necessary agencies, persons, or firms to enable the agency to properly perform the duties imposed by this division.

SEC. 10. Section 63025 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63025. The bank board shall do the following:

(a) Adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) Adopt an official seal.

SEC. 10.5. Section 63025.1 is added to the Government Code, to read:

63025.1. The bank board may do or delegate the following to the executive director:

(a) Sue and be sued in its own name.

(b) As provided in Chapter 5 (commencing with Section 63070), issue bonds, including, at the option of the board, bonds bearing interest that is taxable for the purpose of federal income taxation, to pay all or any part of the cost of any project.

(c) Engage the services of private consultants to render professional and technical assistance and advice in carrying out the purposes of this division.

(d) Employ attorneys, financial consultants, and other advisers as may, in the bank's judgment, be necessary in connection with the issuance and sale of any bonds, notwithstanding Sections 11042 and 11043.

(e) Contract for engineering, architectural, accounting, or other services of appropriate state agencies as may, in its judgment, be necessary for the successful development of a project.

(f) Pay the reasonable costs of consulting engineers, architects, accountants, and construction, land use, recreation, and environmental experts employed by any sponsor or participating party if, in the bank's judgment, those services are necessary for the successful development of a project.

(g) Take title to, and sell by installment sale or otherwise, lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and other interests in lands that are located within the state as the bank may deem necessary or convenient for the financing of the project, upon terms and conditions that it considers to be reasonable.

(h) Receive and accept from any source including, but not limited to, the federal government, the state, or any agency thereof, loans, contributions, or grants, in money, property, labor, or other things of value, for, or in aid of, a project, or any portion thereof.

(i) Make secured loans to any sponsor or participating party in connection with the financing of a project in accordance with an agreement between the bank and the sponsor or a participating party. However, no loan shall exceed the total cost of the project as

determined by the sponsor or the participating party and approved by the bank.

(j) Make secured loans to any sponsor or participating party in accordance with an agreement between the bank and the sponsor or participating party to refinance indebtedness incurred by the sponsor or participating party in connection with projects undertaken and completed prior to any agreement with the bank or expectation that the bank would provide financing.

(k) Mortgage all or any portion of the bank's interest in a project and the property on which any project is located, whether owned or thereafter acquired, including the granting of a security interest in any property, tangible or intangible.

(*l*) Assign or pledge all or any portion of the bank's interests in assets, things of value, mortgages, deeds of trust, bonds, bond purchase agreements, loan agreements, indentures of mortgage or trust, or similar instruments, notes, and security interests in property, tangible or intangible and the revenues therefrom, of a sponsor or a participating party to which the bank has made loans, and the revenues therefrom, including payment or income from any interest owned or held by the bank, for the benefit of the holders of bonds.

(m) Receive or serve as a conduit for the making of grants, and provide for contributions, guarantees, insurance, credit enhancements or liquidity facilities, or other financial enhancements to a sponsor or a participating party as financial assistance for a project.

(n) Lease the project being financed to a sponsor or a participating party, upon terms and conditions that the bank deems proper but shall not be leased at a loss; charge and collect rents therefor; terminate any lease upon the failure of the lessee to comply with any of the obligations thereof; include in any lease, if desired, provisions that the lessee shall have options to renew the lease for a period or periods, and at rents determined by the bank; purchase any or all of the project; or, upon payment of all the indebtedness incurred by the bank for the financing of the project, the bank may convey any or all of the project to the lessee or lessees.

(o) Charge and equitably apportion among sponsors and participating parties the bank's administrative costs and expenses incurred in the exercise of the powers and duties conferred by this division.

(p) Issue, obtain, or aid in obtaining, from any department or agency of the United States, from other agencies of the state, or from any private company, any insurance or guarantee to, or for, the payment or repayment of interest or principal, or both, or any part thereof, on any loan, lease, or obligation or any instrument evidencing or securing the same, made or entered into pursuant to this division.

(q) Notwithstanding any other provision of this division, enter into any agreement, contract, or any other instrument with respect to any insurance or guarantee; accept payment in the manner and

form as provided therein in the event of default by a sponsor or a participating party; and issue or assign any insurance or guarantee as security for the bank's bonds.

(r) Enter into any agreement or contract, execute any instrument, and perform any act or thing necessary or convenient to, directly or indirectly, secure the bank's bonds or a sponsor's obligations to the bank (including, but not limited to, bonds of a sponsor purchased by the bank), with funds or moneys that are legally available and that are due or payable to the sponsor by reason of any grant, allocation, or appropriation of the state or agencies thereof, to the extent that the Controller shall be the custodian at any time of these funds or moneys; and in the event of written notice that the sponsor has not paid or is in default on its obligations to the bank, direct the Controller to withhold payment of those funds or moneys from the sponsor and to pay the same to the bank or an assignee of the bank, until the default has been cured and the amounts then due and unpaid have been paid to the bank or its assignee, or until arrangements satisfactory to the bank have been made to cure the default.

(s) Enter into any agreement or contract, execute any instrument, and perform any act or thing necessary, convenient, or appropriate to carry out any power expressly given to the bank by this division, including, but not limited to, agreements for the sale of all or any part (including principal, interest, redemption rights or any other rights or obligations) of bonds of the bank, liquidity agreements, contracts commonly known as interest rate swap agreements, forward payment conversion agreements, futures or contracts providing for payments based on levels of, or changes in, interest rates or currency exchange rates, or contracts to exchange cash-flows or a series of payments, or contracts, including options, puts or calls to hedge payments, rate, spread, currency exchange, or similar exposure.

(t) Purchase, with the proceeds of the bank's bonds, bonds issued by any sponsor in connection with a project, pursuant to a bond purchase agreement or otherwise. Bonds purchased pursuant to this part may be held by the bank, pledged or assigned by the bank, or sold to public or private purchasers at public or negotiated sale, in whole or in part, separately or together with other bonds issued by the bank, and notwithstanding any other provision of law, may be bought by the bank at private sale.

(u) Enter into purchase and sale agreements with all entities, public and private, including state and local government pension funds, with respect to the sale or purchase of bonds.

(v) Invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, in obligations that are authorized by law for the investment of trust funds in the custody of the Treasurer.

(w) Request the Pooled Money Investment Board for a loan from the Pooled Money Investment Account, in accordance with Section

16312, and execute those documents required by the Pooled Money Investment Board to obtain and repay the loan. The loan shall be deposited in the fund for the purpose of carrying out this chapter.

SEC. 11. Section 63026 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63026. The fiscal powers granted to the bank by this part may be exercised without regard or reference to any other department, division, or agency of the state, except the Legislature. This division shall be deemed to provide an alternative method for doing the things authorized by this division, and shall be regarded as supplemental and additional to powers conferred by other laws.

SEC. 12. Section 63031 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63031. No liability shall be incurred by the bank beyond the extent to which funds have been provided under this division, except that, for the purposes of meeting the necessary expenses of initial organization and operation until the date that the bank derives revenues or proceeds from bonds as provided under this division, the bank may borrow money as needed for the purposes of meeting the necessary expenses of initial organization and operation from any special funds, including the special funds of existing financing authorities, or may borrow an amount not to exceed five million dollars ($5,000,000) from the General Fund or Pooled Money Investment Account for a period not to exceed three years, provided that additional funds have also been made available to capitalize the infrastructure bank. The borrowed money shall be repaid with interest within a reasonable time after the bank receives revenues or proceeds from bonds as provided under this division.

SEC. 13. Section 63035 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63035. The bank shall, not later than November 1 of each year, submit to the Governor, the Secretary of the Business, Transportation and Housing Agency, and the Joint Legislative Budget Committee a report of its activities pursuant to this division for the preceding fiscal year. The report shall include all of the following:

(a) A listing of applications accepted, including a description of the expected employment impact of each project.

(b) A specification of bonds sold and interest rates thereon.

(c) The amount of other public and private funds leveraged by the assistance provided.

(d) A report of revenues and expenditures for the preceding fiscal year, including all of the bank's costs.

(e) A projection of the bank's needs and requirements for the coming year.

(f) Recommendations for changes in state and federal law necessary to meet the objectives of this division.

SEC. 13.5. The heading of Article 3 (commencing with Section 63040) of Chapter 2 of Division 1 of Title 6.7 of the Government

Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

Article 3. State Criteria for the Selection of Projects

SEC. 14. Section 63040 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63040. (a) Upon the advice of the executive director and, after consultation with appropriate state agencies and local government, the bank shall establish criteria, priorities, and guidelines for the selection of projects to receive assistance from the bank.

(b) Thirty days prior to adopting the criteria, priorities, and guidelines, the board shall publish the recommendations required in subdivision (a) and solicit written comments from state agencies. The board shall approve the criteria, priorities, and guidelines by a majority vote.

SEC. 15. Section 63041 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63041. The criteria, priorities, and guidelines shall require at least the following:

(a) The project shall be consistent with the goals and policies contained in the State Environmental Goals and Policies Report, or its successor, approved pursuant to Article 5 (commencing with Section 65041) of Chapter 1.5 of Division 1 of Title 7. After January 1, 1996, a finding of consistency under this subdivision is only required if the report is current and has been updated and approved by the Governor pursuant to the statutory timeframes included in Section 65048.

(b) If the sponsor of the project is a state agency, board, commission, or department, the project shall be consistent with the Capital and Infrastructure Project Planning Report prepared by the Director of Finance pursuant to Article 2 (commencing with Section 13100) of Chapter 2 of Part 3 of Title 2. If the sponsor is a state agency, board, commission, or department, the project proposal or application shall be submitted to the Legislature for approval through the annual budget act. All projects affecting state boards, departments, commissions or agencies shall be subject to approval in the annual Budget Act or other specific legislation.

(c) If the sponsor of the project is a city, county, city and county, special district, joint powers agency, or any other local government entity, the project shall be consistent with the general plan of each city and each county in which the project is located. The general plan of that city and that county in which the project is located shall substantially comply with the requirements of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7. The project shall also be consistent with the capital improvement program adopted by each city and each county in which the project is located. The capital improvement program of that city or county shall be substantially equivalent to the program described in Section

65403.

SEC. 16.3. Section 63042 of the Government Code is repealed.

SEC. 16.5. Article 4 (commencing with Section 63042) is added to Chapter 2 of Division 1 of Title 6.7 of the Government Code, to read:

Article 4. Local Resolution Applying for Bank Financing

63042. (a) Prior to submitting a project to the bank for consideration, the legislative body or bodies of the sponsor or sponsors of the project shall do all of the following:

(1) Provide for public inspection of all supporting documentation at least 10 days prior to the public hearing required in paragraph (2).

(2) Find, by resolution passed at a regularly scheduled public hearing and based on substantial evidence in the record, each of the following:

(A) The project is consistent with the goals and policies contained in the State Environmental Goals and Policies Report, or its successor, approved pursuant to Article 5 (commencing with Section 65041) of Chapter 1.5 of Division 1 of Title 7.

(B) The project is consistent with the general plan of both the city and county, or city and county in the case of San Francisco, in which the project is located, and a capital improvement plan adopted pursuant to Section 65043 or 66002.

(C) The supporting material to be submitted to the board as required in subparagraph (B) is sufficient to substantiate the project.

(D) The proposed financing is appropriate for the specific project.

(E) The project facilitates effective and efficient use of existing and future public resources so as to promote both economic development and conservation of natural resources. The project develops and enhances public infrastructure in a manner that will attract, create, and sustain long-term employment opportunities.

(F) The general plan substantially complies with the requirements of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7.

(G) The project meets the current criteria, priorities, and guidelines adopted by the infrastructure bank board pursuant to Sections 63040 and 63041.

(b) Upon approval of the resolution in subdivision (a) by a majority of the voting members of the legislative body, the legislative body shall transmit the resolution to the executive director of the infrastructure bank. Except as provided in Section 63043, the bank board may not act on the resolution until 30 days after it receives the resolution.

(c) In the case where the membership of a legislative body does not consist of a majority of the elected members, the resolution shall also be approved by the appointing authority of each appointed member of that legislative body at a regularly scheduled public

hearing.

SEC. 16.7. Article 5 (commencing with Section 63043) is added to Chapter 2 of Division 1 of Title 6.7 of the Government Code, to read:

Article 5. Appeal of Local Resolution

63043. Any local public agency may appeal on the basis of whether the resolution (a) was validly adopted by a majority of the voting members of the legislative body, and (b) meets the criteria required in Section 63042.

63044. To be a valid appeal, the appeal must be received by the executive director of the infrastructure bank within 30 days after he or she receives the resolution required in Section 63042.

63045. At least seven days prior to the next available board meeting, the executive director shall recommend to the board an action on the appeal and, at the same time, the executive director shall notify the board, the legislative body, and appellant of his or her recommendation on whether the resolution (a) was adopted by a majority of the voting members of the legislative body and (b) the legislative body has made a finding that the criteria required in paragraph (2) of subdivision (a) of Section 63042 have been met.

63046. At its next hearing after receiving the recommendation transmitted pursuant to Section 63045, the infrastructure bank board shall accept, modify, defer, or reject the recommendation by a majority vote.

SEC. 17. The heading of Chapter 3 (commencing with Section 63050) of Division 1 of Title 6.7 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

CHAPTER 3. CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK FUND

SEC. 18. Section 63050 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63050. (a) There is hereby created in the State Treasury the California Infrastructure and Economic Development Bank Fund for the purpose of implementing the objectives and provisions of this division. Within the fund there shall also be established a Sponsor Revenue Bond Account, a Participating Party Revenue Bond Account, a State Infrastructure Revolving Account, and additional accounts and subaccounts that the bank may establish from time to time.

(b) Notwithstanding Section 13340 and except as provided in subdivision (c), all moneys in the infrastructure bank fund are continuously appropriated without regard to fiscal years for the support of the bank and shall be available for expenditure for the purposes stated in this division.

(c) Moneys in the infrastructure bank fund shall be available for

expenditure for general administration only upon appropriation by the Legislature. This subdivision shall not limit the authority of the bank to expend funds directly related to the servicing of approved debt. Moneys in the fund shall be available for the purpose of general administration of the authority only upon appropriation by the Legislature, but not more than 5 percent of any bond proceeds administered by the authority may be expended to cover the costs of issuance, as that terminology is defined under Section 147 (G) of the Internal Revenue Code.

(d) Notwithstanding any other provision of this division, not more than 15 percent of the financing annually approved by the executive director that utilizes state funds from the infrastructure bank fund may be expended upon educational facilities, environmental mitigation measures, and parks and recreational facilities.

(e) The executive director may transfer funds between the infrastructure bank fund and the guarantee trust fund when appropriate to accomplish the financing objectives of this division.

SEC. 19. Section 63051 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is repealed.

SEC. 20. Section 63052 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63052. (a) The bank may pledge any or all of the moneys in the fund as security for payment of the principal of, and interest on, any particular issuance of bonds issued pursuant to this chapter. For these purposes, or as necessary or convenient to the accomplishment of any other purpose of the bank, the bank may divide the fund into separate accounts or subaccounts. All moneys accruing to the bank pursuant to this division from any sources shall be deposited in the fund.

(b) Subject to priorities that may be created by the pledge of particular moneys in the infrastructure bank fund to secure any issuance of revenue bonds of the bank or a sponsor, and subject further to reasonable costs that may be incurred by the bank in administering the program authorized by this division, all moneys in the infrastructure bank fund derived from any source, shall be held in trust for the security and payment of revenue bonds of the bank or a sponsor and shall not be used or pledged for any other purpose so long as the revenue bonds are outstanding and unpaid.

(c) Pursuant to any agreements with the holders of revenue bonds pledging any particular assets, revenues, or moneys, the bank may create separate accounts or subaccounts in the infrastructure bank fund to manage these assets, revenues, or moneys in the manner set forth in the agreements.

(d) The bank may, from time to time, direct the Treasurer to invest moneys in the infrastructure bank fund that are not required for its current needs, including proceeds from the sale of any bonds, in any eligible securities specified in Section 16430 as the bank shall designate. The bank may direct the Treasurer to deposit moneys in interest-bearing accounts in any bank in this state or in any savings

and loan association in this state. The bank may alternatively require the transfer of moneys in the infrastructure bank fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2. Notwithstanding Section 16305.7, all interest or other increment resulting from the investment or deposit of moneys from the infrastructure bank fund shall be deposited in the infrastructure bank fund. Moneys in the infrastructure bank fund shall not be subject to transfer to any other funds pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2, except to the Surplus Money Investment Fund.

(e) Subject to any agreement with holders of particular bonds, in furtherance of Section 51373 of the Health and Safety Code, and to the extent permitted by law, the bank may also invest moneys of the infrastructure bank fund, including, but not limited to, proceeds of any of its bonds or refunding bonds, in obligations of financial institutions as are permitted by board resolution. The bank may alternatively require the transfer of moneys in the infrastructure bank fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2.

(f) Subject to any agreement with the holders of particular bonds, all interest or other increment resulting from the investment or deposit shall be deposited in the infrastructure bank fund, notwithstanding Section 16305.7. Moneys in the infrastructure bank fund shall not be subject to transfer to any other fund pursuant to Part 2 (commencing with Section 16300) of Division 4 of Title 2, excepting the Surplus Money Investment Fund.

(g) The infrastructure bank fund shall be organized as a public enterprise fund.

(h) The bank shall cause all moneys in the infrastructure bank fund that are in excess of current requirements to be invested and reinvested, from time to time.

SEC. 20.5. Section 63053 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63053. (a) The bank may administer and distribute among its accounts and subaccounts, at its discretion, the proceeds from any general obligation bonds issued in accordance with the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2).

(b) The assets of the infrastructure bank fund shall be available for the payment of the salaries and other expenses charged against it in accordance with this division.

SEC. 21. Section 63056 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63056. Notwithstanding Chapter 2 (commencing with Section 12850) of Part 2.5 of Division 3 of Title 2 and Article 2 (commencing with Section 13320) of Chapter 3 of Part 3 of Division 3 of Title 2, expenditures of the infrastructure bank fund shall not be subject to

the supervision or approval of any other officer or division of state government, with the exception of the Legislature. However, the bank's budget shall be prepared and reviewed not later than November 1 of each year and the agency shall submit to the Legislature a report of its activities for the prior fiscal year. However, the bank's budget regarding the infrastructure bank fund shall be prepared and reviewed in accordance with Section 50913, and, not later than November 1 of each year, the agency shall submit to the Legislature a report of its activities for the prior fiscal year. The bank's operating budget shall be subject to review and appropriation in the annual Budget Act.

SEC. 22. Section 63060 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63060. (a) There is hereby created in the State Treasury the California Infrastructure Guarantee Trust Fund.

Notwithstanding Section 13340 and except as provided in subdivision (b), all money in the guarantee trust fund is hereby continuously appropriated to the bank without regard to fiscal years for the purpose of insuring all or a portion of the accounts and subaccounts within the infrastructure bank fund, any contracts or obligations of the bank or a sponsor, and all or a part of any series of bonds issued by the bank or by a sponsor pursuant to this division, and for the purpose of defraying administrative expenses incurred by the bank in operating the programs of loan and bond guarantee. All insurance premiums received by the bank for insurance, guarantees, or enhancements provided pursuant to this division shall be deposited in the guarantee trust fund. The guarantee trust fund is authorized to guarantee all or a part of any of the accounts and subaccounts within the infrastructure bank fund, any contracts or obligations of the agency or a sponsor, and all or part of any series of bonds issued by the agency or by a sponsor and to authorize payment on any guarantee or enhancement of the guarantee trust fund.

(b) Moneys in the infrastructure bank fund shall be available for expenditure for general administration only upon appropriation by the Legislature. This subdivision shall not limit the authority of the bank to expend funds directly related to the servicing of approved debt.

SEC. 23. Section 63061 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63061. Notwithstanding Chapter 2 (commencing with Section 12850) of Part 2.5 of Division 3 of Title 2 and Article 2 (commencing with Section 13320) of Chapter 3 of Part 3 of Division 3 of Title 2, expenditure of the guarantee trust fund shall not be subject to the supervision or approval of any other officer or division of state government, with the exception of the Legislature. However, the bank's budget respecting the guarantee trust fund shall be prepared and reviewed not later than November 1 of each year and the bank shall submit to the Legislature a report of its activities for the prior

fiscal year. However, the bank's budget regarding the infrastructure bank fund shall be prepared and reviewed in accordance with Section 50913, and, not later than November 1 of each year, the agency shall submit to the Legislature a report of its activities for the prior fiscal year. The bank's operating budget shall be subject to review and appropriation in the annual Budget Act.

SEC. 23.5. Section 63063 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63063. (a) There is a guarantee reserve account in the guarantee trust fund to secure commitments under contracts to guarantee all or part of the bonds of the bank or of a sponsor, any contracts or obligations of the bank or of a sponsor, and all or part of the accounts or subaccounts within the infrastructure bank fund. The bank shall take all reasonable steps to assure that the guarantee reserve account is continuously maintained at not less than the reserve account requirement established pursuant to subdivision (a) of Section 63064. The bank shall pay all of the following into the guarantee reserve account:

(1) Moneys appropriated and made available by the Legislature for deposit in the account.

(2) Any proceeds of bonds, including general obligation bonds, to the extent provided in the resolution, trust agreement, resolutions or trust agreements authorizing the issue thereof.

(3) Any other moneys which the bank may make available for the purpose of deposit to the guarantee reserve account.

(b) The bank shall not cause sums to be withdrawn from the guarantee reserve account in amounts which would reduce the moneys therein to less than the reserve account requirement, except as necessary to satisfy liabilities arising under contracts of guarantee. In the event that the loan guarantee reserve account is reduced to less than the reserve account requirement, the bank shall cease making commitments for, and contracts of, guarantees and enhancements until the guarantee reserve account has been restored to that requirement.

SEC. 24. The heading of Chapter 5 (commencing with Section 63070) of Division 1 of Title 6.7 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

CHAPTER 5. REVENUE BONDS

SEC. 25. Section 63070 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63070. (a) The bank may, from time to time, issue its revenue bonds in a principal amount that the bank shall determine to be necessary to provide sufficient funds for its purposes, which may include, but shall not be limited to, providing funds for the payment of costs of a project, for the purchase of bonds of a sponsor, payment of interest on bonds of the bank, establishment of reserves to secure bonds, refunding previously issued bonds or refunding bonds of the

bank or a sponsor, and payment of other expenditures of the bank incident to issuance of bonds or refunding bonds of the bank.

(b) The bank, by private sale pursuant to a bond purchase agreement, may purchase the bonds of any local sponsor that are issued pursuant to any other provision of applicable law, and may be secured with any funds, moneys, or revenues that are legally available.

(c) The bank may also issue bonds for the purpose of making loans to a sponsor to be used by a sponsor to pay for the cost of a project, and that loan may be secured with any funds, moneys, or revenues that are legally available, including, but not limited to, any legally available funds or moneys that are due or payable to the sponsor by reason of any grant, allocation, or appropriation of the state or agencies thereof, to the extent that the Controller shall be the custodian at any time of these funds or moneys.

SEC. 26. Section 63071 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63071. (a) Notwithstanding any other provision of law, but consistent with Sections 1 and 18 of Article XVI of the California Constitution, a sponsor may issue bonds for purchase by the bank pursuant to a bond purchase agreement. The bank may issue bonds. These bonds may be issued pursuant to the charter of any city or any city and county that authorized the issuance of these bonds as a sponsor and may also be issued by any sponsor pursuant to the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Division 2 of Title 5) to pay the costs and expenses pursuant to this title, subject to the following conditions:

(1) With the prior approval of the bank, the sponsor may sell these bonds in any manner as it may determine, either by private sale, or by means of competitive bid.

(2) Notwithstanding Section 54418, the bonds may be sold at a discount at any rate as the bank and sponsor shall determine.

(3) Notwithstanding Section 54402, the bonds shall bear interest at any rate and be payable at any time, as the sponsor shall determine with the consent of the bank.

(b) The total amount of bonds that may be outstanding at any one time under this chapter shall not exceed five billion dollars ($5,000,000,000).

(c) Bonds for which moneys or securities have been deposited in trust, in amounts necessary to pay or redeem the principal, interest, and any redemption premium thereon, shall be deemed not to be outstanding for purposes of this section.

SEC. 27. Section 63073 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63073. The Treasurer is the elected representative of the state to approve the issuance of bonds issued by the bank or a sponsor pursuant to this chapter.

SEC. 28. Section 63074 of the Government Code is amended to read:

63074. (a) Bonds may be authorized to finance a single project for a single sponsor or a participating party, a series of projects for a single sponsor or a participating party, a single project for several sponsors or participating parties, or several projects for several sponsors or participating parties.

(b) Except as otherwise expressly provided by the bank, every issue of its bonds shall be payable from any revenues or other moneys of the bank available therefor and not otherwise pledged. These revenues or moneys may include the proceeds of additional bonds, subject only to any agreements with the holders of particular bonds pledging any particular revenues or moneys. Notwithstanding that the bonds may be payable from a special fund, these bonds shall be deemed to be negotiable instruments for all purposes.

(c) Subject to the limitations in Section 63071, bonds may be issued in one or more series, may be issued as serial bonds or as term bonds or as a combination thereof. The bonds shall be authorized by resolution of the bank and shall, as provided by the resolution, bear the date of issuance, the time of maturity, which shall not exceed 50 years from the date of issuance, bear the rate or rates of interest, be payable at the time or times provided, be in the denominations provided, be in the form or forms provided, carry the registration privileges provided, be executed in the manner provided, be payable in lawful money of the United States, or other designated currency, at the place or places provided, and be subject to any terms of redemption provided therein.

(d) Sale of the bonds of the bank shall be coordinated by the Treasurer in accordance with Section 5702. The Treasurer shall sell the bonds within 90 days of receiving a certified copy of the resolution authorizing the sale of bonds, unless the board adopts a resolution extending the 90-day period.

(e) The sale may be a public or private sale, and for any price or prices, and on any terms and conditions, as the bank determines proper, after giving due consideration to the recommendations of any sponsor to be assisted from the proceeds of the bonds. Pending preparation of definitive bonds, the Treasurer may issue interim receipts, certificates, or temporary bonds that shall be exchanged for definitive bonds.

SEC. 29. Section 63075 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63075. Any resolution authorizing any bonds or any issue of bonds of the bank may contain the following provisions, which shall be a part of the contract with the holders of the bonds to be authorized:

(a) Provisions pledging the full faith and credit of the bank, or pledging all or any part of the revenues of any project, or any revenue-producing contract or contracts made by the bank with any sponsor, or any other moneys of the bank, to secure the payment of the bonds or of any particular issue of bonds, subject to those agreements with bondholders as may then exist and consistent with Sections 1 and 18 of Article XVI of the California Constitution.

(b) Provisions setting out the rentals, fees, purchase payments, loan repayments, and other charges, and the amounts to be raised in each year thereby, and the use and disposition of the revenues.

(c) Provisions setting aside reserves or sinking funds, and the regulation and disposition thereof.

(d) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds.

(e) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds and the holders thereof that are required to give consent thereto, and the manner in which the consent may be given.

(f) Limitations on the bank's expenditures for operation and administration, or other expenses.

(g) Definitions of acts or omissions to act that constitute a default in the duties of the bank to holders of its obligations, and providing the rights and remedies of the holders in the event of a default.

(h) The mortgaging of any project and the site thereof for the purpose of securing the interests of the bondholders.

(i) The mortgaging of land, improvements, or other assets owned by a sponsor or participating party for the purpose of securing the interests of the bondholders.

SEC. 30. Section 63079 of the Government Code, as added by Chapter 94 of the Statutes of 1994, is amended to read:

63079. (a) Bonds issued under this chapter do not constitute a debt or liability of the state or of any political subdivision thereof, other than the bank, and do not constitute a pledge of the full faith and credit of the state or any of its political subdivisions, other than the bank, but are payable solely from the funds provided therefor under this chapter and shall be consistent with Sections 1 and 18 of Article XVI of the California Constitution. This subdivision shall in no way preclude bond guarantees or enhancements pursuant to this title. All the bonds shall contain on the face thereof a statement to the following effect:

"Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of, or interest on, this bond."

(b) The issuance of bonds under this chapter shall not directly or indirectly or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation therefor or to make any appropriation for their payment. Nothing in this section shall prevent, or be construed to prevent, the bank from pledging the full faith and credit of the infrastructure bank fund to the payment of bonds or issue of bonds authorized pursuant to this chapter.

SEC. 31. Section 50902 of the Health and Safety Code, as amended by Chapter 94 of the Statutes of 1994, is amended to read:

50902. (a) Appointed members of the board shall be able persons broadly reflective of the economic, cultural, and social

diversity of the state, including ethnic minorities and women. However, it is not intended that formulas or specific ratios be applied in order to achieve that diversity. Appointed members of the board shall possess a demonstrable background in banking, finance, housing, or public investment.

(b) The Governor shall select, subject to confirmation by the Senate, four of his or her six appointees from among the following categories: (1) an elected official of a city or county engaged in the planning or implementation of a housing, housing-assistance, or housing-rehabilitation program; (2) a person experienced in residential real estate in the savings and loan, mortgage banking, investment banking, or commercial banking industry; (3) a person experienced as a builder of residential housing; (4) a person experienced in organized labor in the residential or commercial construction industry; (5) a person experienced in the management of rental or cooperative housing occupied by lower income households; (6) a person experienced in manufactured housing finance and development; (7) a person representing the public experienced in the planning or development of infrastructure; (8) a person representing the public who is experienced in matters involving the financing of local public improvement projects; and (9) a person with experience in habitat or open-space preservation. Not more than one person from each category may serve on the board at any one time, except that two members may be appointed by the Governor to represent the public.

(c) The Governor shall also appoint, subject to confirmation by the Senate, two members who are residents of rental or cooperative housing financed by the agency or who are persons experienced in counseling, assisting, or representing tenants.

(d) At least one of the members appointed by the Governor shall be a resident of a rural or nonmetropolitan area.

(e) The Senate Rules Committee and the Speaker of the Assembly shall each appoint a person representing the public.

The term of members of the board shall be six years. Any person appointed to fill a vacancy on the board shall serve only for the remainder of the unexpired term. Members of the board shall, subject to continued qualification, be eligible for reappointment. If a member of the board ceases to meet the qualifications specified in this section, the membership of that person on the board shall be terminated.

It is the intent of the Legislature that persons who are members of the board on December 31, 1994, serve the remainder of their terms.

CHAPTER 750

An act to add Sections 7073.2 and 7085.5 to the Government Code, relating to enterprise zones, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1994. Filed with Secretary of State September 23, 1994.]

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

SECTION 1. Section 7073.2 is added to the Government Code, to read:

7073.2. Any program area or part of a program area that is redesignated as an enterprise zone pursuant to Section 7085.5 shall be deemed designated by the agency pursuant to Section 7073 and shall be excluded from the computation of the allowable number of enterprise zones as set forth in paragraph (1) of subdivision (d) of Section 7073. For purposes of applying any provision of the Revenue and Taxation Code, any enterprise zone designated pursuant to Section 7085.5 shall be deemed designated by Section 7073.

SEC. 2. Section 7085.5 is added to the Government Code, to read:

7085.5. (a) A program area or part of a program area may be redesignated as an enterprise zone by the enactment of an ordinance or resolution by the governing body of the local jurisdiction. The redesignation shall be deemed made by the agency pursuant to paragraph (1) of subdivision (d) of Section 7073.

(b) The redesignation shall take effect upon the date the ordinance or resolution is passed, adopted, or otherwise enacted and, for purposes of the Revenue and Taxation Code, each of the following shall apply:

(1) The redesignation shall be applied to taxable or income years beginning on or after January 1 of the calendar year in which the ordinance or resolution is passed, adopted, or otherwise enacted.

(2) For taxable or income years described in paragraph (1), a taxpayer shall be treated as conducting business activities in an enterprise zone (not a program area), except that the carryover of any unused credits or deductions attributable to the program area from prior taxable or income years shall continue to be allowed and any limitation based upon program area income (or tax attributable to that income) shall be computed using the current income attributable to the enterprise zone.

(c) This section is only applicable to property designated as surplus under the Defense Base Closure and Realignment Act of 1988 (P.L. 100-526) or the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Sec. 2687 et seq.) and is scheduled to be transferred to a city within a county with over one million persons and the transfer takes place pursuant to a base reuse plan adopted by the city council prior to December 1994.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the economic benefits of this act to be achieved as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 751

An act to amend Sections 6377, 17053.49, and 23649 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 22, 1994. Filed with Secretary of State September 23, 1994.]

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

SECTION 1. Section 6377 of the Revenue and Taxation Code is amended to read:

6377. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, any of the following:

(1) Tangible personal property purchased for use by a qualified person to be used primarily in any stage of the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point any raw materials are received by the qualified person and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered property to its completed form, including packaging, if required.

(2) Tangible personal property purchased for use by a qualified person to be used primarily in research and development.

(3) Tangible personal property purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any property described in paragraph (1) or (2).

(4) Tangible personal property purchased for use by a contractor purchasing that property either as an agent of a qualified person or for the contractor's own account and subsequent resale to a qualified person for use in the performance of a construction contract for the qualified person who will use the tangible personal property as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or as a research or storage facility for use in connection with the manufacturing process.

This exemption shall not apply to any tangible personal property that is used primarily in administration, general management, or marketing.

(b) For purposes of this section:

(1) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(2) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(3) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (a).

(4) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(5) "Qualified person" means any person that is both of the following:

(A) A new trade or business. In determining whether a trade or business activity qualifies as a new trade or business, the following rules shall apply:

(i) In any case where a person purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by that person (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including, real, personal, tangible, and intangible property) used by that person (or any related person) in the conduct of his or her trade or business exceed 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the person (or any related person). For purposes of this subparagraph only, the following rules shall apply:

(I) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the month following the quarterly period in which the person (or any related person) first uses any of the acquired trade or business assets in his or her business activity.

(II) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring person (or related person).

(ii) In any case where a person (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months ("prior trade or business activity"), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be

treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the person's (or any related person's) current or prior trade or business activities in this state.

(iii) In any case where a person, including all related persons, is engaged in trade or business activities wholly outside of this state and that person first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in clause (i)), the trade or business activity shall be treated as a new business.

(iv) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the person as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of clause (i).

(v) The term "related person" shall mean any person that is related to that person under either Section 267 or 318 of the Internal Revenue Code.

(vi) The term "acquire" shall include any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(B) That is engaged in those lines of business described in Codes 2000 to 3999, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition.

(6) Notwithstanding paragraph (5), "qualified person" shall not include any person who has conducted business activities in a new trade or business for three or more years.

(7) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(8) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(9) "Tangible personal property" does not include any of the following:

(A) Consumables with a normal useful life of less than one year, except as provided in subparagraph (E) of paragraph (10).

(B) Furniture, inventory, equipment used in the extraction process, or equipment used to store finished products that have completed the manufacturing process.

(C) Any property for which a credit is claimed under either Section 17053.49 or 23649.

(10) "Tangible personal property" includes, but is not limited to, all of the following:

(A) Machinery and equipment, including component parts and

contrivances such as belts, shafts, moving parts, and operating structures.

(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, without limitation, computers, data processing equipment, and computer software, together with all repair and replacement parts with a useful life of one or more years therefor, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the taxpayer or another party.

(C) Property used in pollution control that meets or exceed standards established by this state or any local or regional governmental agency within this state.

(D) Special purpose buildings and foundations used as an integral part of the manufacturing, processing, refining, or fabricating process, or that constitute a research or storage facility used during the manufacturing process. Buildings used solely for warehousing purposes after completion of the manufacturing process are not included.

(E) Fuels used or consumed in the manufacturing process.

(F) Property used in recycling.

(c) No exemption shall be allowed under this section unless the purchaser furnishes the retailer with an exemption certificate, completed in accordance with any instructions or regulations as the board may prescribe, and the retailer subsequently furnishes the board with a copy of the exemption certificate. The exemption certificate shall contain the sales price of the machinery or equipment that is exempt pursuant to subdivision (a).

(d) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(e) (1) Notwithstanding subdivision (a), the exemption provided by this section shall not apply to any sale or use of property which, within one year from the date of purchase, is either removed from California or converted from an exempt use under subdivision (a) to some other use not qualifying for the exemption.

(2) Notwithstanding subdivision (a), on or after January 1, 1995, the exemption established by this section shall not apply with respect to any tax levied pursuant to Sections 6051.2 and 6201.2, or pursuant to Section 35 of Article XIII of the California Constitution.

(f) If a purchaser certifies in writing to the seller that the property purchased without payment of the tax will be used in a manner entitling the seller to regard the gross receipts from the sale as exempt from the sales tax, and within one year from the date of purchase, the purchaser (1) removes that property outside California, (2) converts that property for use in a manner not

qualifying for the exemption, or (3) uses that property in a manner not qualifying for the exemption, the purchaser shall be liable for payment of sales tax, with applicable interest, as if the purchaser were a retailer making a retail sale of the property at the time the property is so removed, converted, or used, and the sales price of the property to the purchaser shall be deemed the gross receipts from that retail sale.

(g) (1) This section shall remain in effect until the date specified in paragraph (2), on which date this section shall cease to be operative, and as of that date is repealed.

(2) (A) This section shall cease to be operative on January 1, 2001, or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report annually to the Legislature with respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, "total employment" means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

SEC. 2. Section 17053.49 of the Revenue and Taxation Code is amended to read:

17053.49. (a) (1) A qualified taxpayer shall be allowed a credit against the "net tax," as defined in Section 17039, equal to 6 percent of the qualified cost of qualified property that is placed in service in this state.

(2) In the case of any qualified costs paid or incurred on or after January 1, 1994, and prior to the first taxable year of the qualified taxpayer beginning on or after January 1, 1995, the credit provided under paragraph (1) shall be claimed by the qualified taxpayer on the qualified taxpayer's return for the first taxable year beginning on or after January 1, 1995. No credit shall be claimed under this section on a return filed for any taxable year commencing prior to the qualified taxpayer's first taxable year beginning on or after January 1, 1995.

(b) (1) For purposes of this section, "qualified cost" means any cost that satisfies each of the following conditions:

(A) Except as otherwise provided in this subparagraph, is a cost paid or incurred by the qualified taxpayer for the construction, reconstruction, or acquisition of qualified property on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i). In the case of any qualified property constructed, reconstructed, or acquired by the qualified taxpayer (or any person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) pursuant to a binding contract in existence on or prior to January 1, 1994, costs paid pursuant to that contract shall be subject to allocation as follows. Contract costs shall be allocated to qualified property based on a ratio of costs actually paid prior to January 1,

1994, and total contract costs actually paid. "Cost paid" shall include, without limitation, contractual deposits and option payments. To the extent of cost allocated, whether or not currently deductible or depreciable for tax purposes, to a period prior to January 1, 1994, the cost shall be deemed allocated to property acquired before January 1, 1994, and is thus not a "qualified cost."

(B) Except as provided in paragraph (2) of subdivision (d) and subparagraph (B) of paragraph (3) of subdivision (d), is an amount upon which the qualified taxpayer has paid, directly or indirectly as a separately stated contract amount or as determined from the records of the qualified taxpayer, sales or use tax under Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(C) Is an amount properly chargeable to the capital account of the qualified taxpayer.

(2) (A) For purposes of this subdivision, any contract entered into on or after January 1, 1994, that is a successor or replacement contract to a contract that was binding prior to January 1, 1994, shall be treated as a binding contract in existence prior to January 1, 1994.

(B) If a successor or replacement contract is entered into on or after January 1, 1994, and the subject of the successor or replacement contract relates both to amounts for the construction, reconstruction, or acquisition of qualified property described in the original binding contract and to costs for the construction, reconstruction, or acquisition of qualified property not described in the original binding contract, then the portion of those amounts described in the successor or replacement contract that were not described in the original binding contract shall not be treated as costs paid or incurred pursuant to a binding contract in existence on or prior to January 1, 1994, under subparagraph (A) of paragraph (1).

(3) (A) For purposes of this section, an option contract in existence prior to January 1, 1994, under which a qualified taxpayer (or any other person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) had an option to acquire qualified property, shall be treated as a binding contract under the rules in paragraph (2). For purposes of this subparagraph, an option contract shall not include an option under which the option holder will forfeit an amount less than 10 percent of the fixed option price in the event the option is not exercised.

(B) For purposes of this section, a contract shall be treated as binding even if the contract is subject to a condition.

(c) For purposes of this section, "qualified taxpayer" means any taxpayer or partnership engaged in those lines of business described in Codes 2000 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(d) For purposes of this section, "qualified property" means property that is described as either of the following:

(1) Tangible personal property that is defined in Section 1245(a)

of the Internal Revenue Code for use by a qualified taxpayer in those lines of business described in Codes 2000 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, that is primarily used for any of the following:

(A) For the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered tangible personal property to its completed form, including packaging, if required.

(B) In research and development.

(C) To maintain, repair, measure, or test any property described in this paragraph.

(D) For pollution control that meets or exceeds standards established by the state or by any local or regional governmental agency within the state.

(E) For recycling.

(2) The value of any capitalized labor costs that are directly allocable to the construction or modification of property described in paragraph (1).

(3) In the case of any qualified taxpayer engaged in manufacturing activities described in SIC Code 357 or 367 or those activities related to biotech described in SIC Code 8731 or those activities related to biopharmaceutical establishments only that are described in SIC Codes 2830 to 2836, inclusive, "qualified property" also includes the following:

(A) Special purpose buildings and foundations that are constructed or modified for use by the qualified taxpayer primarily in a manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(B) The value of any capitalized labor costs that are directly allocable to the construction or modification of special purpose buildings and foundations that are used primarily in the manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(C) (i) For purposes of this paragraph, "special purpose building and foundation" means only a building and the foundation immediately underlying the building that is specifically designed and constructed or reconstructed for the installation, operation, and use of specific machinery and equipment with a special purpose, which machinery and equipment, after installation, will become affixed to or a fixture of the real property, and the construction or reconstruction of which is specifically designed and used exclusively for the specified purposes as set forth in subparagraph (A) ("qualified purpose").

(ii) A building is specifically designed and constructed or modified for a qualified purpose if it is not economic to design and construct the building for the intended purpose and then use the structure for a different purpose.

(iii) For purposes of clause (i) and clause (vi), a building is used exclusively for a qualified purpose only if its use does not include a use for which it was not specifically designed and constructed or modified. Incidental use of a building for nonqualified purposes does not preclude the building from being a special purpose building. "Incidental use" means a use which is both related and subordinate to the qualified purpose. It will be conclusively presumed that a use is not subordinate if more than one-third of the total usable volume of the building is devoted to a use which is not a qualified purpose.

(iv) In the event an entire building does not qualify as a special purpose building, a taxpayer may establish that a portion of a building, and the foundation immediately underlying the portion, qualifies for treatment as a special purpose building and foundation if the portion satisfies all of the definitional provisions in this subparagraph.

(v) To the extent that a building is not a special purpose building as defined above, but a portion of the building qualifies for treatment as a special purpose building, then all equipment which exclusively supports the qualified purpose occurring within that portion and which would qualify as Internal Revenue Code Section 1245 property if it were not a fixture or affixed to the building shall be treated as a cost of the portion of the building which qualifies for treatment as a special purpose building.

(vi) Buildings and foundations which do not meet the definition of a special purpose building and foundation set forth above include, but are not limited to: buildings designed and constructed or reconstructed principally to function as a general purpose manufacturing, industrial, or commercial building; research facilities that are used primarily prior to or after, or prior to and after, the manufacturing process; or storage facilities that are used primarily prior to or after, or prior to and after, completion of the manufacturing process. A research facility shall not be considered to be used primarily prior to or after, or prior to and after, the manufacturing process if its purpose and use relate exclusively to the development and regulatory approval of the manufacturing process for specific biopharmaceutical products. A research facility which is used primarily in connection with the discovery of an organism from which a biopharmaceutical product or process is developed does not meet the requirements of the preceding sentence.

(D) For purposes of this paragraph, "biopharmaceutical activities" means those activities which use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as

opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(4) Subject to the provisions in subparagraph (B) of paragraph (1) of subdivision (b), qualified property also includes computer software that is primarily used for those purposes set forth in paragraph (1) of this subdivision.

(5) Qualified property does not include any of the following:

(A) Furniture.

(B) Facilities used for warehousing purposes after completion of the manufacturing process.

(C) Inventory.

(D) Equipment used in the extraction process.

(E) Equipment used to store finished products that have completed the manufacturing process.

(F) Any tangible personal property that is used in administration, general management, or marketing.

(G) Any vehicle for which a credit is claimed pursuant to Section 17052.11 or 23603.

(e) For purposes of this section:

(1) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(2) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(3) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (d).

(4) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(5) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(6) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(7) "Small business" means a taxpayer that meets any of the following requirements during the taxable year for which the credit is allowed:

(A) Has gross receipts of less than fifty million dollars ($50,000,000).

(B) Has net assets of less than fifty million dollars ($50,000,000).

(C) Has a total credit of less than one million dollars ($1,000,000).

(f) The credit allowed under subdivision (a) shall apply to qualified property that is acquired by or subject to lease by a qualified taxpayer, subject to the following special rules:

(1) A lessor of qualified property, irrespective of whether the lessor is a qualified taxpayer, shall not be allowed the credit provided under subdivision (a) with respect to any qualified property leased to another qualified taxpayer.

(2) For purposes of paragraphs (2) and (3) of subdivision (b), "binding contract" shall include any lease agreement with respect to the qualified property.

(3) (A) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is not treated as a sale under Part 1 (commencing with Section 6001) of Division 2, the following rules shall apply:

(i) Except as provided by subparagraph (C) of this paragraph, subparagraphs (A) and (C) of paragraph (1) of subdivision (b) shall not apply.

(ii) Except as provided in subparagraph (B) and clause (iii), the "qualified cost" upon which the lessee shall compute the credit provided under this section shall be equal to the original cost to the lessor (within the meaning of Section 18031) of the qualified property that is the subject of the lease.

(iii) Except as provided in clause (iv), the requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied only if the lessor has made a timely election under either Section 6094.1 or subdivision (d) of Section 6244 and has paid sales tax reimbursement or use tax measured by the purchase price of the qualified property (within the meaning of paragraph (5) of subdivision (g) of Section 6006). For purposes of this subdivision and clause (iv), the amount of original cost to the lessor which may be taken into account under clause (ii) shall not exceed the purchase price upon which sales tax reimbursement or use tax has been paid under the preceding sentence or under clause (iv).

(iv) With respect to leases entered into between January 1, 1994, and the effective date of this clause, the lessor may elect to pay use tax measured by the purchase price of the property by reporting and paying the tax with the return of the lessor for the fourth calendar quarter of 1994. In computing the use tax under the preceding sentence, a credit shall be allowed under Part 1 (commencing with Section 6001) of Division 2 for all sales or use tax previously paid on the lease.

(B) For purposes of applying subparagraph (A) only, the following special rules shall apply:

(i) The original cost to the lessor of the qualified property shall be reduced by the amount of any original cost of that property that was taken into account by any predecessor lessee in computing the credit allowable under this section.

(ii) Clause (i) shall not apply in any case where the predecessor lessee was required to recapture the credit provided under this section pursuant to the provisions of subdivision (g).

(iii) For purposes of this section only, in any case where a successor lessor has acquired qualified property from a predecessor

lessor in a transaction not treated as a sale under Part 1 (commencing with Section 6001) of Division 2, the original cost to the successor lessor of the qualified property shall be reduced by the amount of the original cost of the qualified property that was taken into account by any lessee of the predecessor lessor in computing the credit allowable under this section.

(C) In determining the original cost of any qualified property under this paragraph, only amounts paid or incurred by the lessor on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i), shall be taken into account. In the case of any qualified property constructed, reconstructed, or acquired by a lessor pursuant to a binding contract in existence on or prior to January 1, 1994, the allocation rule specified in subparagraph (A) of paragraph (1) of subdivision (b) shall apply in determining the original cost to the lessor of qualified property.

(D) Notwithstanding subparagraph (A), in the case of any leasing transaction for which the lessee is allowed the credit under this section and thereafter the lessee (or any party related to the lessee within the meaning of Section 267 or 318 of the Internal Revenue Code) acquires the qualified property from the lessor (or any successor lessor) within one year from the date the qualified property is first used by the lessee under the terms of the lease, the lessee's (or related party's) acquisition of the qualified property from the lessor (or successor lessor) shall be treated as a disposition by the lessee of the qualified property that was subject to the lease under subdivision (g).

(4) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is treated as a sale under Part 1 (commencing with Section 6001) of Division 2, the following rules shall apply:

(A) Subparagraph (A) of paragraph (1) of subdivision (b) shall be applied by substituting the term "purchase" for the term "construction, reconstruction, or acquisition."

(B) Subparagraph (C) of paragraph (1) of subdivision (b) shall apply.

(C) The requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied at the time that either the lessor or the qualified taxpayer pays sales or use tax under Part 1 (commencing with Section 6001) of Division 2.

(5) (A) In the case of any leasing transaction described in paragraph (3), the lessor shall provide a statement to the lessee specifying the amount of the lessor's original cost of the qualified property and the amount of that cost upon which a sales or use tax was paid within 45 days after the close of the lessee's taxable year in which the credit is allowable to the lessee under this section.

(B) The statement required under subparagraph (A) shall be made available to the Franchise Tax Board upon request.

(g) No credit shall be allowed if the qualified property is removed

from the state, is disposed of to an unrelated party, or is used for any purpose not qualifying for the credit provided in this section in the same taxable year in which the qualified property is first placed in service in this state. If any qualified property for which a credit is allowed pursuant to this section is thereafter removed from this state, disposed of to an unrelated party, or used for any purpose not qualifying for the credit provided in this section within one year from the date the qualified property is first placed in service in this state, the amount of the credit allowed by this section for that qualified property shall be recaptured by adding that credit amount to the net tax of the qualified taxpayer for the taxable year in which the qualified property is disposed of, removed, or put to an ineligible use.

(h) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years as follows:

(1) Except as provided in paragraph (2), for the seven succeeding years if necessary, until the credit is exhausted.

(2) In the case of a small business, for the nine succeeding years, if necessary, until the credit is exhausted.

(i) (1) This section shall remain in effect until the date specified in paragraph (2), on which date this section shall cease to be operative, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (h), until the credit is exhausted.

(2) (A) This section shall cease to be operative on January 1, 2001, or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report to the Legislature annually with respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, "total employment" means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

SEC. 3. Section 23649 of the Revenue and Taxation Code is amended to read:

23649. (a) (1) A qualified taxpayer shall be allowed a credit against the "tax," as defined in Section 23036, equal to 6 percent of the qualified cost of qualified property that is placed in service in this state.

(2) In the case of any qualified costs paid or incurred on or after January 1, 1994, and prior to the first income year of the qualified taxpayer beginning on or after January 1, 1995, the credit provided under paragraph (1) shall be claimed by the qualified taxpayer on the qualified taxpayer's return for the first income year beginning on or after January 1, 1995. No credit shall be claimed under this section on a return filed for any income year commencing prior to the qualified taxpayer's first income year beginning on or after January 1, 1995.

(b) (1) For purposes of this section, "qualified cost" means any cost that satisfies each of the following conditions:

(A) Except as otherwise provided in this subparagraph, is a cost paid or incurred by the qualified taxpayer for the construction, reconstruction, or acquisition of qualified property on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i). In the case of any qualified property constructed, reconstructed, or acquired by the qualified taxpayer (or any person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) pursuant to a binding contract in existence on or prior to January 1, 1994, costs paid pursuant to that contract shall be subject to allocation as follows. Contract costs shall be allocated to qualified property based on a ratio of costs actually paid prior to January 1, 1994, and total contract costs actually paid. "Cost paid" shall include, without limitation, contractual deposits and option payments. To the extent of cost allocated, whether or not currently deductible or depreciable for tax purposes, to a period prior to January 1, 1994, the cost shall be deemed allocated to property acquired before January 1, 1994, and is thus not a "qualified cost."

(B) Except as provided in paragraph (2) of subdivision (d) and subparagraph (B) of paragraph (3) of subdivision (d), is an amount upon which the qualified taxpayer has paid, directly or indirectly as a separately stated contract amount or as determined from the records of the qualified taxpayer, sales or use tax under Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(C) Is an amount properly chargeable to the capital account of the qualified taxpayer.

(2) (A) For purposes of this subdivision, any contract entered into on or after January 1, 1994, that is a successor or replacement contract to a contract that was binding prior to January 1, 1994, shall be treated as a binding contract in existence prior to January 1, 1994.

(B) If a successor or replacement contract is entered into on or after January 1, 1994, and the subject of the successor or replacement contract relates both to amounts for the construction, reconstruction, or acquisition of qualified property described in the original binding contract and to costs for the construction, reconstruction, or acquisition of qualified property not described in the original binding contract, then the portion of those amounts described in the successor or replacement contract that were not described in the original binding contract shall not be treated as costs paid or incurred pursuant to a binding contract in existence on or prior to January 1, 1994, under subparagraph (A) of paragraph (1).

(3) (A) For purposes of this section, an option contract in existence prior to January 1, 1994, under which a qualified taxpayer (or any other person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) had an option to acquire qualified property, shall be treated as a binding

contract under the rules in paragraph (2). For purposes of this subparagraph, an option contract shall not include an option under which the option holder will forfeit an amount less than 10 percent of the fixed option price in the event the option is not exercised.

(B) For purposes of this section, a contract shall be treated as binding even if the contract is subject to a condition.

(c) For purposes of this section, "qualified taxpayer" means any taxpayer engaged in those lines of business described in Codes 2000 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(d) For purposes of this section, "qualified property" means property that is described as either of the following:

(1) Tangible personal property that is defined in Section 1245(a) of the Internal Revenue Code for use by a qualified taxpayer in those lines of business described in Codes 2000 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, that is primarily used for any of the following:

(A) For the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered tangible personal property to its completed form, including packaging, if required.

(B) In research and development.

(C) To maintain, repair, measure, or test any property described in this paragraph.

(D) For pollution control that meets or exceeds standards established by the state or by any local or regional governmental agency within the state.

(E) For recycling.

(2) The value of any capitalized labor costs that are directly allocable to the construction or modification of property described in paragraph (1).

(3) In the case of any qualified taxpayer engaged in manufacturing activities described in SIC Code 357 or 367 or those activities related to biotech described in SIC Code 8731 or those activities related to biopharmaceutical establishments only that are described in SIC Codes 2830 to 2836, inclusive, "qualified property" also includes the following:

(A) Special purpose buildings and foundations that are constructed or modified for use by the qualified taxpayer primarily in a manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(B) The value of any capitalized labor costs that are directly allocable to the construction or modification of special purpose

buildings and foundations that are used primarily in the manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(C) (i) For purposes of this paragraph, "special purpose building and foundation" means only a building and the foundation immediately underlying the building that is specifically designed and constructed or reconstructed for the installation, operation, and use of specific machinery and equipment with a special purpose, which machinery and equipment, after installation, will become affixed to or a fixture of the real property, and the construction or reconstruction of which is specifically designed and used exclusively for the specified purposes as set forth in subparagraph (A) ("qualified purpose").

(ii) A building is specifically designed and constructed or modified for a qualified purpose if it is not economic to design and construct the building for the intended purpose and then use the structure for a different purpose.

(iii) For purposes of clause (i) and clause (vi), a building is used exclusively for a qualified purpose only if its use does not include a use for which it was not specifically designed and constructed or modified. Incidental use of a building for nonqualified purposes does not preclude the building from being a special purpose building. "Incidental use" means a use which is both related and subordinate to the qualified purpose. It will be conclusively presumed that a use is not subordinate if more than one-third of the total usable volume of the building is devoted to a use which is not a qualified purpose.

(iv) In the event an entire building does not qualify as a special purpose building, a taxpayer may establish that a portion of a building, and the foundation immediately underlying the portion, qualifies for treatment as a special purpose building and foundation if the portion satisfies all of the definitional provisions in this subparagraph.

(v) To the extent that a building is not a special purpose building as defined above, but a portion of the building qualifies for treatment as a special purpose building, then all equipment which exclusively supports the qualified purpose occurring within that portion and which would qualify as Internal Revenue Code Section 1245 property if it were not a fixture or affixed to the building shall be treated as a cost of the portion of the building which qualifies for treatment as a special purpose building.

(vi) Buildings and foundations which do not meet the definition of a special purpose building and foundation set forth above include, but are not limited to: buildings designed and constructed or reconstructed principally to function as a general purpose manufacturing, industrial, or commercial building; research facilities that are used primarily prior to or after, or prior to and after, the manufacturing process; or storage facilities that are used primarily prior to or after, or prior to and after, completion of the

manufacturing process. A research facility shall not be considered to be used primarily prior to or after, or prior to and after, the manufacturing process if its purpose and use relate exclusively to the development and regulatory approval of the manufacturing process for specific biopharmaceutical products. A research facility which is used primarily in connection with the discovery of an organism from which a biopharmaceutical product or process is developed does not meet the requirements of the preceding sentence.

(D) For purposes of this paragraph, "biopharmaceutical activities" means those activities which use organisms or materials derived from organisms, and their cellular, subcellular or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(4) Subject to the provisions in subparagraph (B) of paragraph (1) of subdivision (b), qualified property also includes computer software that is primarily used for those purposes set forth in paragraph (1) of this subdivision.

(5) Qualified property does not include any of the following:

(A) Furniture.

(B) Facilities used for warehousing purposes after completion of the manufacturing process.

(C) Inventory.

(D) Equipment used in the extraction process.

(E) Equipment used to store finished products that have completed the manufacturing process.

(F) Any tangible personal property that is used in administration, general management, or marketing.

(G) Any vehicle for which a credit is claimed pursuant to Section 17052.11 or 23603.

(e) For purposes of this section:

(1) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(2) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(3) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (d).

(4) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(5) "Refining" means the process of converting a natural resource

to an intermediate or finished product.

(6) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(7) "Small business" means a taxpayer that meets any of the following requirements during the income year for which the credit is allowed:

(A) Has gross receipts of less than fifty million dollars ($50,000,000).

(B) Has net assets of less than fifty million dollars ($50,000,000).

(C) Has a total credit of less than one million dollars ($1,000,000).

(f) The credit allowed under subdivision (a) shall apply to qualified property that is acquired by or subject to lease by a qualified taxpayer, subject to the following special rules:

(1) A lessor of qualified property, irrespective of whether the lessor is a qualified taxpayer, shall not be allowed the credit provided under subdivision (a) with respect to any qualified property leased to another qualified taxpayer.

(2) For purposes of paragraphs (2) and (3) of subdivision (b), "binding contract" shall include any lease agreement with respect to the qualified property.

(3) (A) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is not treated as a sale under Part 1 (commencing with Section 6001) of Division 2, the following rules shall apply:

(i) Except as provided by subparagraph (C) of this paragraph, subparagraphs (A) and (C) of paragraph (1) of subdivision (b) shall not apply.

(ii) Except as provided in subparagraph (B) and clause (iii), the "qualified cost" upon which the lessee shall compute the credit provided under this section shall be equal to the original cost to the lessor (within the meaning of Section 24912) of the qualified property that is the subject of the lease.

(iii) Except as provided in clause (iv), the requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied only if the lessor has made a timely election under either Section 6094.1 or subdivision (d) of Section 6244 and has paid sales tax reimbursement or use tax measured by the purchase price of the qualified property (within the meaning of paragraph (5) of subdivision (g) of Section 6006). For purposes of this subdivision and clause (iv), the amount of original cost to the lessor which may be taken into account under clause (ii) shall not exceed the purchase price upon which sales tax reimbursement or use tax has been paid under the preceding sentence or under clause (iv).

(iv) With respect to leases entered into between January 1, 1994, and the effective date of this clause, the lessor may elect to pay use tax measured by the purchase price of the property by reporting and paying the tax with the return of the lessor for the fourth calendar quarter of 1994. In computing the use tax under the preceding

sentence, a credit shall be allowed under Part 1 (commencing with Section 6001) of Division 2 for all sales or use tax previously paid on the lease.

(B) For purposes of applying subparagraph (A) only, the following special rules shall apply:

(i) The original cost to the lessor of the qualified property shall be reduced by the amount of any original cost of that property that was taken into account by any predecessor lessee in computing the credit allowable under this section.

(ii) Clause (i) shall not apply in any case where the predecessor lessee was required to recapture the credit provided under this section pursuant to the provisions of subdivision (g).

(iii) For purposes of this section only, in any case where a successor lessor has acquired qualified property from a predecessor lessor in a transaction not treated as a sale under Part 1 (commencing with Section 6001) of Division 2, the original cost to the successor lessor of the qualified property shall be reduced by the amount of the original cost of the qualified property that was taken into account by any lessee of the predecessor lessor in computing the credit allowable under this section.

(C) In determining the original cost of any qualified property under this paragraph, only amounts paid or incurred by the lessor on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i), shall be taken into account. In the case of any qualified property constructed, reconstructed, or acquired by a lessor pursuant to a binding contract in existence on or prior to January 1, 1994, the allocation rule specified in subparagraph (A) of paragraph (1) of subdivision (b) shall apply in determining the original cost to the lessor of qualified property.

(D) Notwithstanding subparagraph (A), in the case of any leasing transaction for which the lessee is allowed the credit under this section and thereafter the lessee (or any party related to the lessee within the meaning of Section 267 or 318 of the Internal Revenue Code) acquires the qualified property from the lessor (or any successor lessor) within one year from the date the qualified property is first used by the lessee under the terms of the lease, the lessee's (or related party's) acquisition of the qualified property from the lessor (or successor lessor) shall be treated as a disposition by the lessee of the qualified property that was subject to the lease under subdivision (g).

(4) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is treated as a sale under Part 1 (commencing with Section 6001) of Division 2, the following rules shall apply:

(A) Subparagraph (A) of paragraph (1) of subdivision (b) shall be applied by substituting the term "purchase" for the term "construction, reconstruction, or acquisition."

(B) Subparagraph (C) of paragraph (1) of subdivision (b) shall

apply.

(C) The requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied at the time that either the lessor or the qualified taxpayer pays sales or use tax under Part 1 (commencing with Section 6001) of Division 2.

(5) (A) In the case of any leasing transaction described in paragraph (3), the lessor shall provide a statement to the lessee specifying the amount of the lessor's original cost of the qualified property and the amount of that cost upon which a sales or use tax was paid within 45 days after the close of the lessee's taxable year in which the credit is allowable to the lessee under this section.

(B) The statement required under subparagraph (A) shall be made available to the Franchise Tax Board upon request.

(g) No credit shall be allowed if the qualified property is removed from the state, is disposed of to an unrelated party, or is used for any purpose not qualifying for the credit provided in this section in the same taxable year in which the qualified property is first placed in service in this state. If any qualified property for which a credit is allowed pursuant to this section is thereafter removed from this state, disposed of to an unrelated party, or used for any purpose not qualifying for the credit provided in this section within one year from the date the qualified property is first placed in service in this state, the amount of the credit allowed by this section for that qualified property shall be recaptured by adding that credit amount to the net tax of the qualified taxpayer for the taxable year in which the qualified property is disposed of, removed, or put to an ineligible use.

(h) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years as follows:

(1) Except as provided in paragraph (2), for the seven succeeding years if necessary, until the credit is exhausted.

(2) In the case of a small business, for the nine succeeding years, if necessary, until the credit is exhausted.

(i) (1) This section shall remain in effect until the date specified in paragraph (2) on which date this section shall cease to be operative, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (h), until the credit is exhausted.

(2) (A) This section shall cease to be operative on January 1, 2001, or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report to the Legislature annually with respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, "total employment" means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

SEC. 4. Notwithstanding Section 2230 of the Revenue and

Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for sales and use tax revenues lost by that agency under this act.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, Section 1 of this act shall become operative on the first day of the first calendar quarter commencing more than 45 days after the effective date of this act.

CHAPTER 752

An act to amend Section 743.1 of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 22, 1994. Filed with Secretary of State September 23, 1994.]

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

SECTION 1. (a) The Legislature finds that competitive rates for utility electrical service are an essential element in the state's effort to attract and retain business enterprises. It further finds that the currently effective rates offered by the investor-owned utilities for firm service to these heavy industrial customers are not competitive with rates for similar services offered in other states.

(b) The Legislature further finds that the currently effective pricing incentives provided by the investor-owned electrical utilities for interruptible or curtailable electrical service are necessary to keep electrical rates for service to heavy industrial customers near competitive levels, and it further finds that in order to obtain a competitive rate, these customers have to be willing to curtail or interrupt their operations, or both, upon notice from the utility.

(c) The Legislature therefore declares that in order to maintain and improve the competitiveness of California electrical rates, and to enhance the attractiveness of the state as a site for continuing and new industrial enterprises, the firm electrical service rates of the investor-owned utilities should be brought down to the level of current rates for interruptible or curtailable service.

SEC. 2. Section 743.1 of the Public Utilities Code is amended to read:

743.1. (a) Electrical corporations shall make available to qualifying heavy industrial customers optional interruptible or curtailable service. The effective rate for interruptible or curtailable service to qualifying customers shall reflect a pricing incentive for electing to operate under the interruptible or curtailable service option. In no event shall the level of the pricing incentive for interruptible or curtailable service be altered from those levels in effect on January 30, 1993.

(b) The commission shall direct each public utility electrical corporation to renew its efforts to reduce the rates charged heavy industrial customers to a level competitive with other states, and to do so without shifting recovery of costs to other customer classes. In order to permit evaluation of its efforts, each electrical corporation shall report to the commission no later than June 30, 1995, on those measures or practices it has identified that would permit it to reduce its firm service rates for heavy industrial customers to the level of its interruptible or curtailable service rates provided to those customers as of January 30, 1993. Additionally, the report shall reflect the potential for implementing the measures and practices and the import of the reductions on California's overall economy, with particular emphasis on the expansion and retention of employment within the manufacturing sector.

(c) It is the intent of the Legislature that these efforts to reduce rates will result in a reduction of each electrical corporation's firm service rates for heavy industrial customers to the level of its rates for interruptible or curtailable service provided to those customers in effect as of January 30, 1993. In the event that an electrical corporation's rates for firm service are not reduced to that level before January 1, 1996, the pricing incentives for interruptible or curtailable service shall not be altered from the level established under subdivision (a) prior to January 1, 1999. Any extension of these pricing incentives beyond January 1, 1996, shall not involve any shifting of recovery of costs to other customer classes.

(d) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 753

An act to add Part 10.2 (commencing with Section 15710) to Division 3 of Title 2 of the Government Code, relating to economic development, and making an appropriation therefor.

[Approved by Governor September 22, 1994. Filed with Secretary of State September 23, 1994.]

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

SECTION 1. Part 10.2 (commencing with Section 15710) is added to Division 3 of Title 2 of the Government Code, to read:

PART 10.2. CALIFORNIA ECONOMIC DEVELOPMENT FINANCING AUTHORITY

15710. The Legislature finds and declares that:

(a) In order to secure and enhance the economic well-being of Californians, promote economic development in the state, and provide a healthy climate for the creation of jobs, it is necessary for public policy to support the efforts of expanding businesses, businesses seeking to locate in California, local development organizations, public bodies, and new entrepreneurs to gain access to capital through current and potential operations of financial markets.

(b) The high cost and the lack of availability of industrial loans for small and medium size businesses is making it difficult for thousands of these enterprises to get established, to maintain their present employment levels, or to expand employment.

(c) The shortage of loan funds, as well as the underdeveloped nature of some financial markets, has led a number of states to take action to remedy these conditions to the extent possible. Actions of these states have included efforts to:

(1) Use the state's access to capital markets more effectively for economic development.

(2) Pool the financing needs of businesses, economic development organizations, and others that are too small to access national capital markets or obtain credit enhancement on their own.

(3) Facilitate credit enhancement for selected specific projects.

(4) Provide or arrange for loan insurance.

(5) Create and support secondary markets for loan portfolios of urban and rural economic development corporations and others.

(6) Improve access to international capital markets.

(7) Provide opportunities for public pension funds and other institutional investors to play a larger role in state economic development.

(8) Provide advisory services and technical assistance to help small businesses structure cash-flows and arrange covenants.

(9) Arrange for or provide subordinated debt for selected projects.

(10) Support the revolving loan funds of urban and rural economic and community development corporations.

(11) Increase support for local infrastructure development.

(d) The advantages of these activities to the general public in California would include an increase in the gainful employment of residents, a decrease in welfare and unemployment compensation costs, an increase in the tax base, and an increase in the establishment and renovation of business and community physical facilities.

15711. For the purposes of this part, the following words and terms shall have the following meanings unless the context clearly indicates another or different meaning or intent:

(a) "Agency" means the Trade and Commerce Agency and "authority" means the California Economic Development Financing Authority. For purposes of the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4), the authority shall be deemed to be the committee.

(b) "Board" means the Board of Directors of the California Economic Development Financing Authority.

(c) "Bonds" means bonds, notes (including bond revenue, tax, or grant anticipation notes), commercial paper, floating rate, and variable maturity securities, and any other evidences of indebtedness.

(d) "Executive director" means the executive director of the California Economic Development Financing Authority.

(e) "Economic development project" means a project providing public benefits through the establishment, expansion, securing, financing, or operating of an industrial, recreational, research and development, commercial or service enterprise or facility, or community facility, or any parts or combination thereof located within California and including, but not limited to, all facilities or infrastructure necessary or desirable in connection therewith, including provision for working capital.

(f) "Lending institution" means any bank or trust company, savings bank, credit union, insurance company, financial institution, Federal National Mortgage Association, Student Loan Marketing Association, nonprofit economic development corporation, or any governmental agency approved by the authority to participate in the financing of the project.

(g) "Person" means any natural or corporate person, including bodies politic and corporate, trust, society, association, partnership, nonprofit economic or community development corporation, or any governmental agency.

(h) "Area of high unemployment" means a city or county or portion thereof.

15712. (a) There is hereby established in the Trade and Commerce Agency the California Economic Development Financing Authority. The authority is a body public and corporate.

The authority constitutes, as a component of the agency, a public instrumentality and the exercise by the authority of the powers conferred by this part is the performance of an essential public function.

(b) The authority is placed in the executive office of the Secretary of the Trade and Commerce Agency but shall not be subject to the supervision or control of that office or of any board, bureau, department, or other agency of the state except as specifically provided in this part.

(c) The authority shall be governed and its corporate power exercised by a board of directors which shall consist of the following persons:

(1) The Director of Finance or his or her designee.

(2) The Treasurer or his or her designee.

(3) The Secretary of the Trade and Commerce Agency or his or her designee, who shall serve as chair of the board.

(d) Appointed directors shall serve at the pleasure of the appointing power.

(e) Five of the members shall constitute a quorum and the affirmative vote of five board members shall be necessary for any action to be taken by the board.

(f) No member of the board shall participate in any authority action or attempt to influence any decision or recommendation by any employee of, or consultant to, the authority that involves a sponsor of which he or she is a representative or in which the member has a direct personal financial interest within the meaning of Section 87100.

(g) Except as provided in this subdivision, the members of the board shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties to the extent that reimbursement for these expenses is not otherwise provided or payable by another public agency, and shall receive one hundred dollars ($100) for each full day of attending meetings of the authority.

(h) This part shall be administered by the authority which shall have, and is hereby vested with, all powers reasonably necessary to carry out its duties and responsibilities.

(i) The authority may employ any other persons necessary to perform the duties imposed by this part.

15713. (a) The board shall appoint an executive director, upon recommendation of the chair, to carry out its policies. The executive director shall serve at the pleasure of the authority and shall manage the staff of the authority.

(b) The executive director shall receive compensation as fixed by the chair with the approval of the Department of Personnel Administration.

(c) The executive director may, subject to the general supervision of the board, employ other employees, consultants, agents, including legal counsel, and advisors, and shall attend meetings of the board.

(d) All officers and employees of the authority having access to its cash or negotiable securities shall give bond to the authority at its expense in such amounts and with such surety as the board may prescribe. The persons required to give bond may be included in one or more blanket or scheduled bonds.

(e) The authority shall continue as long as it shall have bonds or insurance commitments outstanding and until its existence is terminated by law. Upon the termination of the existence of the authority, all right, title and interest in and to all of its assets and all of its obligations, duties, covenants, and agreements shall vest in and shall be possessed, performed, and assumed by the state.

(f) Any documentary materials or data whatsoever made or received by any member or employee of the authority and consisting of trade secrets or commercial or financial information regarding the operation of any business conducted by an applicant for any form of assistance that the authority is empowered to render, or regarding the competitive position of an applicant in a particular field of endeavor, shall not be deemed public records of the authority. Any discussion of trade secrets or commercial or financial information may be held by the board in executive sessions closed to the public. The purpose of any executive session shall be set forth in the official minutes of the authority and no business which is not directly related to that purpose shall be transacted nor shall any vote be taken during the executive session.

15714. The purpose of the authority is to promote and encourage commerce and industry, and generally to foster economic development in the state. In furtherance of this purpose, the authority may do all of the following:

(a) Adopt and amend bylaws for the regulation of its affairs and the conduct of its business.

(b) Adopt an official seal.

(c) Sue and be sued in its own name.

(d) To obtain insurance.

(e) Issue bonds, borrow money, and apply the proceeds thereof as provided in Section 15715 in order to implement the economic development purposes of this part, and to augment the means of financing authorized by law for, or otherwise available to, public bodies and other users.

(f) Make loans to approved projects, either as sole lender or in participation with other lenders.

(g) Make loans to any person for the acquisition, construction, alteration, or any combination thereof, or other financing of a project, including, but not limited to, loans to lending institutions under terms and conditions requiring the proceeds of the loans to be used by those lending institutions for the making of loans to users for qualified projects.

(h) Make or provide for the making of guarantees, credit enhancements, grants, contributions, or other financial enhancements.

(i) To plan, acquire, or lease facilities on a temporary basis and to provide for the construction, reconstruction, improvement, alteration, or repair of any facility or part thereof.

(j) To enter into contracts and agreements and execute all instruments necessary or convenient thereto for accomplishing the purposes of the authority.

(k) To acquire personal property, or any interest therein, on either a temporary or long-term basis in the name of the authority and to acquire real property on a temporary basis by gift, purchase, transfer, foreclosure, lease or otherwise including rights of easements; to hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of any real or personal property, or any interest therein or mortgage any interest owned by it or under its control, custody, or in its possession; to release or relinquish any right, title, claim, lien, interest, easement, or demand however acquired, including any equity or right or redemption in property foreclosed by it; to take assignments or leases and rentals, proceed with foreclosure actions or take any other actions necessary or incidental to the performance of its purposes.

(*l*) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in such investments as may be provided in any financing document relating to the use of those funds, or, if not so provided, as the board may determine.

(m) To apply for and accept subventions, grants, loans, advances, and contributions from any source of money, property, labor, or other things of value. The sources may include bond proceeds, dedicated taxes, state appropriations, federal appropriations, federal grant and loan funds, public and private sector retirement system funds, and proceeds of loans from the Pooled Money Investment Account. The authority may request, and the Pooled Money Investment Board may make, loans to the authority from the Pooled Money Investment Account in accordance with Section 16314.

(n) To provide and pay for such advisory services and technical assistance as may be necessary or desired to carry out the purposes of this part, including contracting with nonprofit economic development or community development corporations to market and develop local projects.

(o) To establish and collect any fees and charges as the authority shall determine to be reasonable, and to receive and apply revenues from fees and charges to the purposes of the agency. The authority may enter into fee-sharing agreements with nonprofit economic development corporations.

(p) To do all things necessary and convenient to carry out its purposes and exercise its powers, provided, however, that nothing herein shall be construed to authorize the authority to engage directly in the business of a manufacturing, industrial, real estate development, or nongovernmental service enterprise. Further, the authority shall not be organized to accept deposits of money for time or demand deposits or to constitute a bank or trust company.

15715. In order to provide or arrange for the financing of economic development projects, the authority may:

(a) Issue taxable revenue bonds to provide financing for economic development projects compatible with the public interest as specified in Section 15720.

(b) Issue taxable revenue bonds to provide financing for the revolving loan funds and economic development projects of small business development corporations, local economic development corporations, community development corporations, and nonprofit organizations, which revolving loan funds and economic development projects shall be compatible with the public interest.

(c) Issue tax-exempt revenue bonds to provide financing for private activity economic development projects as permitted by federal law and in accordance with applicable California law relating to the distribution of state allocations of such tax exemptions. Projects so financed shall be compatible with the public interest.

(d) Issue tax-exempt revenue bonds for economic development projects of public sector and nonprofit organizations qualifying for exemption under federal law.

(e) Use revenues from general obligation bonds issued pursuant to the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4) to guarantee bonds issued for general and specific purposes, to finance local infrastructure projects and also economic development projects and revolving loan funds of small business development corporations, nonprofit economic development corporations, community development corporations, and nonprofit corporations. These projects must meet the criteria specified in Section 15720 relating to compatibility with the public interest.

15716. (a) Any issue of revenue bonds by the authority may be secured and made more attractive to capital markets through financial instruments, including, but not limited to:

(1) Deeds of trust on the resources, facilities, and revenues of the projects.

(2) Credit enhancements, including, but not limited to, letters of credit, bond insurance, and surety bonds provided by private sector financial institutions.

(3) Insurance and guarantees provided by the authority itself.

(b) The authority may make loans to help establish and support the revolving loan funds of small business development corporations, economic development corporations, community development corporations, and nonprofit corporations. The loans may be made from any appropriate account or subaccount of the California Economic Development Financing Authority Fund and as determined by the authority.

(c) The authority may lend money to one or more public bodies in order to carry out the purposes of the authority and to assist those public bodies in implementing their corporate purposes, and as evidence of the loan the agency may acquire and hold the bonds,

notes, or other duly authorized payment obligations of those public bodies. The authority may issue bonds for the purpose of financing that lending. In financing that lending, the authority may require the public body to pay any fixed annual charges and any fees and expenses charged by the authority for its services rendered in connection with the acquisition by the authority of the obligation. Upon the issuance to the authority of any obligations of a public body for purposes of this section, the public body issuing the obligations shall be deemed to have agreed that, in the event of the failure of the public body to pay the interest and premium, if any, on, and principal of, the obligations, and, notwithstanding the provisions of any other law, the authority may thereupon avail itself of all remedies, rights, and provisions of law applicable in those circumstances, and no delay or failure to exercise any rights and remedies on the part of the authority may be raised as a defense by the public body.

(d) No loan shall be made to those public bodies unless the authority shall have first received assurance satisfactory to the authority that the payment obligations of the public body to be acquired by the authority in connection with the loan are valid and binding obligations of the public body enforceable in accordance with their terms. However, this part shall not be construed to expand the power or purpose of any public body except the California Economic Development Financing Authority.

(e) The authority shall develop a policy regarding financing companies that move within this state so as to minimize any displacement of jobs.

(f) In addition to any other methods the authority may use to identify economic development projects, the authority shall utilize existing local economic development networks to identify these projects and prepare a plan, in consultation with local economic development networks and their organizations and representatives, to implement this policy.

15717. Any resolution authorizing any revenue bonds or any issue of revenue bonds of the authority may contain the following provisions, which shall be a part of the contract with the holders of the revenue bonds to be authorized.

(a) Provisions pledging the full faith and credit of the authority, or pledging all or any part of the revenues of any project, or any revenue-producing contract or contracts made by the authority, or any other moneys of the authority, to secure the payment of the revenue bonds or of any particular issue of revenue bonds, subject to those agreements with bondholders as may then exist.

(b) Provisions setting out the rentals, fees, purchase payments, loan repayments, and other charges, and the amounts to be raised in each year thereby, and the use and disposition of the revenues.

(c) Provisions setting aside reserves or sinking funds, and the regulation and disposition thereof.

(d) Limitations on the issuance of additional revenue bonds, the

terms upon which additional revenue bonds may be issued and secured, and the refunding of outstanding revenue bonds.

(e) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of revenue bonds and the holders thereof that are required to give consent thereto, and the manner in which the consent may be given.

(f) Limitations on the authority's expenditures for operation and administration, or other expenses.

(g) Definitions of acts or omissions to act that constitute a default in the duties of the authority to holders of its obligations, and provisions on the rights and remedies of the holders in the event of a default.

(h) The mortgaging of any project and the site thereof for the purpose of securing the interests of the bondholders.

(i) The mortgaging of land, improvements, or other assets owned by a sponsor or participating party for the purpose of securing the interest of the bondholders.

15718. The authority may provide insurance or reinsurance of loans or portions thereof, or their debt service, including amounts payable as premiums of penalties in the event of mandatory or optional prepayment, made to finance the acquisition, construction, rehabilitation, alteration, or any combination thereof, of physical facilities, and to provide insurance or reinsurance or reserves, or portions thereof, or the yield therefrom, established to secure bonds issued to fund those loans or reserves.

15719. (a) The authority may enter into or arrange agreements for insurance or reinsurance with users, mortgagors, lending institutions, insurers, and others, the authority being authorized to reinsure or cede risks to the insurers in any amounts as the authority may determine and the insurers, if otherwise authorized to reinsure or insure those risks in California, being hereby authorized to reinsure the authority or cede risks to the authority to the same extent as if the authority were a company authorized to reinsure or insure those risks.

(b) The authority may fix a rate or rates of premium for insurance or reinsurance, which need not be uniform and may reflect any risks and classifications of risk as the authority determines to be reasonable.

(c) The authority may exercise those other powers as are necessary or incidental to insurance, reinsurance, and related matters.

(d) The authority shall make reasonable provisions for the security of loans made by the authority, and any insurance, reinsurance, and other financing arrangements negotiated by the authority.

(e) The insurance or reinsurance provided for by the authority shall not constitute a debt or pledge of the faith and credit of the state or any subdivision thereof.

(f) The state does hereby pledge to, and agrees with, the holders

of any bonds issued under this part, and with those parties who may enter into contracts with the authority pursuant to this part, that the state will not limit or alter the rights hereby vested in the authority to finance any project and to fulfill the terms of any loan agreement, lease, or other contract with the authority pursuant to this part, or in any way impair the rights or remedies of the bondholders or of the parties until those bonds, together with interest thereon, are fully discharged or provision for this discharge has been made and those contracts are fully performed on the part of the authority. The authority, as agent for the state, may include this pledge and undertaking for the state in its obligations or contracts.

(g) In implementing the provisions of this part, the authority may coordinate with other state and local entities, including, but not limited to, nonprofit economic development corporations, the California Industrial Development Financing Advisory Commission, the California Debt Limit Allocation Committee, the California Association of Local Economic Development (CALED), local redevelopment agencies, and other bond authorities in order to promote business development and job creation.

15720. (a) The authority shall develop criteria for the disbursement of funds under this part, however, no financing shall be made by the authority unless the authority shall have first determined that the financing or assistance meets the following public interest criteria:

(1) The financing, loan, grant, or other assistance is for a project or a use in the State of California.

(2) Those seeking funds or other assistance are capable of meeting obligations incurred under relevant agreements.

(3) The assistance to be rendered is in an area of high unemployment or has the capability of providing jobs to low- and moderate-income people.

(4) The financing will provide employment, or retention of employment, having a reasonable relationship to the amount of the financing.

(5) In the case of loans or revenue bonds, payments to be made to the agency under applicable financing documents are adequate to pay the current expenses of the authority in connection with the financing and to make payments on the bonds.

(b) Projects that the board determines will produce long-term employment creation or retention shall receive first priority for financing.

(c) If any recipient of funds under this part leaves this state prior to the completion of the full term of the loan, the loan or grant shall become due immediately and the borrower shall be required to pay the loan in full plus all accrued interest and fees and any penalties established by the authority as a condition for the loan.

(d) Any recipient of funds under this part, that utilizes the funds for construction purposes, shall certify that the contractors are properly licensed by the Contractors' State License Board.

15721. (a) All public works financed pursuant to this part shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(b) No more than one-fourth of the funds and the portfolio of the authority may be devoted to public infrastructure financing through public agencies, and this financing shall be only in conjunction with an otherwise qualified economic development project, as defined in Section 15711.

(c) The authority shall require that the proposed project be consistent with any existing local or regional comprehensive plan.

(d) No financing shall be provided for any project for housing.

15722. (a) There is hereby created the California Economic Development Financing Authority Fund, which shall be administered by the California Economic Development Financing Authority. Notwithstanding Section 13340, funds collected pursuant to this part are continuously appropriated to the authority for the purposes specified in this chapter, except for funds utilized for the purpose of general administration of the authority. Moneys in the fund shall be available for the purpose of general administration of the authority only upon appropriation by the Legislature, in which no more than 5 percent of any general obligation bond revenues administered by the authority may be expended for costs related to general administration. However, the board may expend continuously appropriated moneys to cover costs that are directly related to servicing and administration of approved debt.

(b) The authority may accept funds from any source, including, but not limited to, bond proceeds, dedicated taxes, state appropriations, the proceeds of loans from the Pooled Money Investment Account, public and private sector retirement system funds, federal appropriations, federal grants or loan funds, and proceeds from investments. The authority shall make a reasonable effort to identify and obtain funds from any source in order to minimize the demand for funds from bond proceeds. The authority may keep moneys from different sources in identified subaccounts to the extent the authority deems it appropriate for the various purposes set forth in this part.

(c) All expenses incurred in carrying out the purposes of this part shall be payable solely from funds provided pursuant to this part, and no liability or obligation shall be imposed upon the state and none shall be incurred by the authority beyond the extent to which money shall have been provided pursuant to this division.

(d) The Bond Guarantee Trust Account is hereby established within the fund and shall consist of funds approved by voters in general obligation bond acts that shall be used to guarantee bonds issued for general or specific purposes. The authority may pledge any or all of the amounts in the account authorized as a guarantee for payment of bonds issued pursuant to this chapter, including the redemption price of bonds, the payment of trustee's fees, or other similar obligations, if all of the following requirements are met:

(1) General obligation bonds have been authorized for issuance by the bond finance committee.

(2) A loan from the Pooled Money Investment Account has been authorized by the Pooled Money Investment Board in an amount equal to or less than the amount of the bond authorization and the proceeds have been deposited in the Bond Guarantee Trust Account.

(3) General obligation bonds have been issued, the proceeds of which are to be deposited in the Bond Guarantee Trust Account.

15723. (a) The authority may, from time to time, issue its bonds in the principal amount which the authority determines is necessary to provide sufficient funds for its purposes and for establishment of reserves to secure the bonds and other expenditures of the authority incident to, and necessary or convenient to, issuance of the bonds.

(b) With regard to funds from general obligation bonds, the board may authorize expenditures upon review and approval by the Legislature. At the end of each fiscal year, the board shall submit a detailed report of these expenditures to the Legislature. The Legislature, by statute, may suspend further expenditure of these funds by the board if the Legislature deems that the public purposes of the disbursals are not being appropriately met.

(c) The authority may administer and distribute among its accounts and subaccounts, the revenues from any general obligation bonds issued in accordance with the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4).

15724. Every issue of bonds shall be obligations of the authority payable only out of moneys in the fund, subject only to any agreements with the holders of particular bonds pledging any particular assets, revenues, or moneys.

15725. Any bonds issued under this chapter may be secured by a trust agreement, indenture, or resolution by and between the authority and trustee, which shall be a bank or trust company chartered under the laws of this state or of the United States.

15726. The bonds shall be authorized by resolution or resolutions of the authority, shall be in the form, shall bear such date or dates, and shall mature at the time or times as the resolution or resolutions may provide, except that no bond shall mature more than 50 years from the date of its issue. The bonds shall bear interest at the rate or rates, be in the denominations, be in the form, executed in the manner, be payable in the medium of payment at the place or places within or without the state, be subject to the terms of redemption and contain the terms and conditions as the resolution or resolutions may provide. The bonds of the authority shall be sold at public or private sale by the Treasurer at, above, or below the par value, on the terms and conditions and for the consideration as the authority shall determine by resolution prior to the sale.

15727. Whenever the authority deems that it will increase the salability or the price of the bonds to obtain, prior to or after sale, a legal opinion, other than that of the Attorney General, as to the

validity or tax-exempt nature of the bonds, the authority may authorize the Treasurer to obtain a legal opinion. Payment for legal services shall be made out of the proceeds of the sale of the bonds.

15728. The authority may employ financial consultants, advisers, and accountants as may be necessary in its judgment in connection with the issuance and sale of any bonds of the authority. Payment for these services may be made out of the proceeds of the sale of the bonds.

15729. Section 10295 and Sections 10335 to 10382, inclusive, of the Public Contract Code shall not apply to agreements entered into by the authority or the Treasurer in connection with the sale of bonds or notes authorized under this part.

15730. Bonds issued pursuant to this chapter are a legal investment for any state special or trust fund notwithstanding any provision of law limiting the investments which may be made by the special or trust fund. The bonds of the authority shall be legal investments in which all public officers and public bodies of the state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, savings and loan associations, savings banks and savings associations, investment companies, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The bonds may be used as security for public deposits. The bonds are also securities which may properly and legally be deposited with and received by all public officers and bodies of the state or any agency or political subdivision of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is authorized by law, including deposits to secured public funds.

15731. Revenue bonds issued under the provisions of this part shall not be deemed to constitute a debt or liability of the state or of any political subdivision thereof, other than the authority, or a pledge of the faith and credit of the state or of any political subdivision but shall be payable solely from the funds and the assets of the authority, the revenues received by the authority and the contracts and agreements concerning the repayment of loans. All the revenue bonds shall contain on their face a statement to the effect that neither the State of California nor the authority shall be obligated to pay the principal, or the interest on the revenue bonds, except from the revenues received by the authority and those portions of the revenue bond fund and the assets of the authority as shall be provided by the documents governing the revenue bond issuance, and that neither the faith and credit nor the taxing power of the State of California or of any of its political subdivisions is pledged to the payment of the principal or interest on the revenue bonds. The issuance of revenue bonds under this part shall not

directly or indirectly or contingently obligate the state or any of its political subdivisions to levy or to pledge any form of taxation whatever or to make any appropriation for their payment.

15732. No liability shall be incurred by the authority beyond the extent to which moneys have been provided under this part, except that for the purpose of meeting the necessary expenses of initial organization and operation until the date as the authority derives revenues or proceeds from bonds or notes as provided under this part, the authority may borrow money as needed for expenses from any funds available to the authority, including the General Fund in the State Treasury. The borrowed moneys shall be repaid with interest within a reasonable time after the authority receives revenues or proceeds from bonds or notes as provided under this part.

CHAPTER 754

An act to amend Section 7073 of, and to add Section 7073.7 to, the Government Code, relating to economic development.

[Approved by Governor September 22, 1994. Filed with Secretary of State September 23, 1994.]

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

SECTION 1. Section 7073 of the Government Code is amended to read:

7073. (a) The governing body of any city or county may, either by ordinance or resolution, propose an eligible area plus one commercial or industrial area or both within its respective jurisdiction as the geographic area for an enterprise zone. A county may propose an area within the unincorporated area as the geographic area for an enterprise zone, but shall not propose an area within an incorporated area. This proposed geographic area shall be based upon findings by the governing body that the area is a depressed area and that the designation as an enterprise zone is necessary in order to assist in attracting private sector investment in the area. The city or county shall establish definitive boundaries for the area to be included in the application for designation and, if designated by the agency, the designation shall be binding for a period of 15 years.

(b) Following the application for designation of an enterprise zone by a city or county, the governing body shall apply to the agency for designation. The agency shall adopt regulations and guidelines concerning the necessary contents of each application for designation.

(c) Any city, county, or city and county with an eligible area within its jurisdiction may complete a preliminary application. A

maximum of 20 applications may be chosen each year to complete a final application.

(d) (1) From the applications received, the agency may designate not more than 27 enterprise zones within the state, one of which may be designated an airport enterprise zone and not more than three of which may be designated high technology enterprise zones.

(2) In the case of any existing enterprise zone or area established pursuant to Chapter 12.9 (commencing with Section 7080), or any new enterprise zone or area established pursuant to Chapter 12.9 (commencing with Section 7080) designated on or after the effective date of the act adding this paragraph, a city or county may propose that the enterprise zone or area established pursuant to Chapter 12.9 (commencing with Section 7080) within the incorporated area be expanded by 15 percent to include definitive boundaries that are contiguous to the enterprise zone or area established pursuant to Chapter 12.9 (commencing with Section 7080). The agency may approve that expansion for enterprise zones based upon the criterion specified in subdivision (g), and for expansion of areas established pursuant to Chapter 12.9 (commencing with Section 7080), the criterion specified in Section 7082.

(3) Notwithstanding any other provision to the contrary, the two additional enterprise zones authorized by the act adding this paragraph shall be designated by the agency pursuant to Section 7073.7. For the purposes of applying any provision of the Revenue and Taxation Code, the two additional enterprise zones designated pursuant to Section 7073.7 shall be deemed designated by this section.

(e) The agency shall review the progress and effectiveness of each enterprise zone within five years of the date of designation, or by December 31, 1999, for zones designated prior to January 1, 1994, and every five years thereafter, and report the findings to the Legislature.

(f) In designating enterprise zones, the agency shall select from the applications submitted those proposed enterprise zones which, based on those applications, meet, to the extent possible, the following criterion:

Those proposed enterprise zones which, upon a comparison of all of the applications submitted, indicate that they propose the most effective, innovative, and comprehensive regulatory, tax, program, and other incentives in attracting private sector investment in the zone proposed.

For purposes of this subdivision, regulatory incentives include, but are not limited to, all of the following: the suspension or relaxation of locally originated or modified building codes, zoning laws, general development plans, or rent controls; the elimination or reduction of fees for applications, permits, and local government services; and the establishment of a streamlined permit process.

Tax incentives include, but are not limited to, the elimination or

reduction of construction taxes or business license taxes.

Program and other incentives may include, but are not limited to, all of the following: the provision or expansion of infrastructure; the targeting of federal block grant moneys, including small cities, education, and health and welfare block grants; the targeting of economic development grants and loan moneys, including grant and loan moneys provided by the federal Urban Development Action Grant program and the federal Economic Development Administration; the targeting of state and federal job disadvantaged and vocational education grant moneys, including moneys provided by the federal Job Partnership Training Act of 1982; the targeting of federal or state transportation grant moneys; and the targeting of federal or state low-income housing and rental assistance moneys.

In the process of designating new zones, the agency shall take into consideration the location of existing zones and make every effort to locate new zones in a manner that will not adversely affect any existing zones.

(g) In evaluating applications for designation, the agency shall ensure that applications are not disqualified solely because of technical deficiencies and shall provide applicants with an opportunity to correct the deficiencies. Applications shall be disqualified if the deficiencies are not corrected within two weeks.

(h) For purposes of this section, "high technology enterprise zone" means an enterprise zone which is intended to attract private sector investment in high technology industries and is proposed to be located in an area which would permit the association of those industries with an urban university or college.

(i) The applications and selection criteria for designation adopted pursuant to Section 7076 prior to the effective date of the act adding this subdivision shall apply to this section, as amended by the act adding this subdivision.

(j) Section 7076 shall not apply to the extent it conflicts with the provisions of the act adding this subdivision.

(k) For purposes of this section, "airport enterprise zone" means an enterprise zone intended to attract private sector investment in aviation-dependent industries, commercial aviation, and other commercial and industrial activity and which includes a rural airport located within unincorporated territory.

SEC. 2. Section 7073.7 is added to the Government Code, to read:

7073.7. The agency shall designate two enterprise zones each of which shall meet at least two of the following three criteria:

(a) The unemployment rate in the area has been twice the state average for each of the preceding five years.

(b) The median household income for the area is less than 90 percent of the median household income for the county in which the area is located.

(c) The designated area has grown at least 8 percent in population per year for each of the preceding two years but has not had a corresponding percentage growth in area employment.

CHAPTER 755

An act to amend Sections 17053.8 and 23622 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 22, 1994. Filed with Secretary of State September 23, 1994.]

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

SECTION 1. Section 17053.8 of the Revenue and Taxation Code is amended to read:

17053.8. (a) There shall be allowed as credit against the "net tax" (as defined in Section 17039) for the taxable year an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means the wages paid or incurred by the employer during the taxable year to qualified disadvantaged individuals. "Qualified wages" means that portion of hourly wages which does not exceed 150 percent of the minimum wage.

(2) "Qualified years one through five wages" means, with respect to any individual, qualified wages received during the 60-month period beginning with the day the individual commences employment within an enterprise zone.

(3) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(c) For purposes of this section:

(1) "Qualified disadvantaged individual" means an individual—

(A) Who is a qualified employee within the meaning of subdivision (d).

(B) Who is hired by the employer after the designation of the area in which services were performed as an enterprise zone (under Section 7073 of the Government Code).

(C) Who is any of the following:

(i) An individual who is eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) and who is

receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act.

(ii) Any individual who is eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who is eligible as determined by the Employment Development Department under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(2) Priority shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(d) For purposes of this section: "qualified employee" means an individual—

(1) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone, and

(2) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(e) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification which provides that a qualified individual meets the eligibility requirements specified in subparagraph (C) of paragraph (1) of subdivision (c).

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(f) (1) For purposes of this section:

(A) All employees of trades or businesses (which are not incorporated) which are under common control shall be treated as employed by a single employer, and

(B) The credit (if any) allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

The regulations prescribed under this paragraph shall be based on principles similar to the principles which apply in the case of controlled groups of corporations as specified in subdivision (f) of Section 23622.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (g)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(g) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount (determined under those regulations) equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(h) In the case of an estate or trust—

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, and

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated (for purposes of this part) as the employer with respect to those wages.

(i) For purposes of this section, "enterprise zone" means an area for which designation as an enterprise zone is in effect under Section 7073 of the Government Code.

(j) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit.

(k) In the case where the credit allowed under this section exceeds the net tax for the taxable year, that portion of the credit which exceeds the net tax may be carried over to the net tax in succeeding taxable years for the number of taxable years in which the designation of an enterprise zone under Section 7073 of the Government Code is operative, or 15 taxable years, if longer, until the credit is used. The credit shall be applied first to the earliest taxable years possible.

(*l*) The amount of the credit allowed by this section in any taxable year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code) as if that attributed income represented all of the income of the taxpayer subject to tax under this part. The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section as follows:

(1) For taxable years beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the enterprise zone by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(2) "The enterprise zone" shall be substituted for "this state."

SEC. 2. Section 17053.8 of the Revenue and Taxation Code is amended to read:

17053.8. (a) There shall be allowed as credit against the "net tax" (as defined in Section 17039) for the taxable year an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means the wages paid or incurred by the employer during the taxable year to qualified disadvantaged individuals. "Qualified wages" means that portion of hourly wages which does not exceed 150 percent of the minimum wage. "Qualified

wages" shall not include any wages paid or incurred on or after the date the enterprise zone designation terminates.

(2) "Qualified years one through five wages" means, with respect to any individual, qualified wages received during the 60-month period beginning with the day the individual commences employment within an enterprise zone. "Qualified years one through five wages" shall not include any wages paid or incurred on or after the date enterprise zone designation terminates.

(3) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(4) "Qualified disadvantaged individual" means an individual—

(A) Who is a qualified employee within the meaning of paragraph (5).

(B) Who is hired by the employer after the designation of the area in which services were performed as an enterprise zone (under Section 7073 of the Government Code).

(C) Who is any of the following:

(i) An individual who is eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(ii) Any individual who is eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who is eligible as determined by the Employment Development Department under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(5) "Qualified employee" means an individual who satisfies both of the following:

(A) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone, and

(B) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification which provides that a qualified individual meets the eligibility requirements specified in subparagraph (C) of paragraph (4) of subdivision (b).

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of trades or businesses that are not incorporated and are under common control shall be treated as employed by a single employer, and

(B) The credit (if any) allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit. The regulations prescribed under this paragraph shall be based on principles similar to the principles which apply in the case of controlled groups of corporations as specified in subdivision (d) of Section 23622.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount (determined under those regulations) equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be

employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) In the case of an estate or trust—

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, and

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated (for purposes of this part) as the employer with respect to those wages.

(g) For purposes of this section, "enterprise zone" means an area for which designation as an enterprise zone is in effect under Section 7073 of the Government Code.

(h) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit.

(i) In the case where the credit allowed under this section exceeds the net tax for the taxable year, that portion of the credit which exceeds the net tax may be carried over to the net tax in succeeding taxable years for the number of taxable years in which the designation of an enterprise zone under Section 7073 of the Government Code is operative, or 15 taxable years, if longer, until the credit is used. The credit shall be applied first to the earliest taxable years possible.

(j) The amount of the credit allowed by this section in any taxable year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code) as if that attributed income represented all of the income of the taxpayer subject to tax under this part. The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section as follows:

(1) For taxable years beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the enterprise zone by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(2) "The enterprise zone" shall be substituted for "this state."

(k) (1) Any taxpayer claiming a credit pursuant to this section shall provide, in a form and manner specified by the Franchise Tax Board, the average number of full-time (defined as 35 hours or more per week), part-time, and seasonal employees employed by the taxpayer within an enterprise zone during the base year and during

the taxable year.

(2) "Base year" means the later of the first taxable year beginning on or after January 1, 1995, or the first taxable year the taxpayer claims a credit, deduction, or loss attributable to business activities within the enterprise zone.

(3) In the case of a failure to provide the information specified in paragraph (1), no credit under this section shall be allowed for the taxable year until the information is provided.

SEC. 3. Section 23622 of the Revenue and Taxation Code is amended to read:

23622. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means the wages paid or incurred by the employer during the income year to qualified disadvantaged individuals. "Qualified wages" means that portion of hourly wages which does not exceed 150 percent of the minimum wage.

(2) "Qualified years one through five wages" means, with respect to any individual, qualified wages received during the 60-month period beginning with the day the individual commences employment within an enterprise zone.

(3) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(c) For purposes of this section:

(1) "Qualified disadvantaged individual" means an individual—

(A) Who is a qualified employee within the meaning of subdivision (d).

(B) Who is hired by the employer after the designation of the area in which services were performed as an enterprise zone (under Section 7073 of the Government Code).

(C) Who is any of the following:

(i) An individual who is eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) and who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act.

(ii) Any individual who is eligible to be a voluntary or mandatory

registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who is eligible as determined by the Employment Development Department under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(2) Priority shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(d) For purposes of this section, "qualified employee" means an individual—

(1) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone, and

(2) Who performs at least 50 percent of his or her services for the taxpayer during the income year in an enterprise zone.

(e) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification which provides that a qualified individual meets the eligibility requirements specified in subparagraph (C) of paragraph (1) of subdivision (c).

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(f) (1) For purposes of this section, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In that case, the credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit. For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that—

(A) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(B) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (g)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the

employee continues to be employed in that trade or business.

(g) (1) If the employment of any employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation, or

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(h) In the case of—

(1) An organization to which Section 593 of the Internal Revenue Code applies, and

(2) A regulated investment company or a real estate investment trust subject to taxation under this part

rules similar to the rules provided in subsections (e) and (h) of Section 46 of the Internal Revenue Code shall apply.

(i) For purposes of this section, "enterprise zone" means an area for which designation as an enterprise zone is in effect under Section 7073 of the Government Code.

(j) The credit shall be reduced by the credit allowed under Section 23621. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit.

(k) In the case where the credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, for the number of years in which the designation of an enterprise zone under Section 7073 of the Government Code is operative, or 15 income years, if longer, until the credit has been exhausted.

(*l*) The amount of the credit allowed by this section shall not in any year exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section as follows:

(1) For income years beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the enterprise zone by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(2) "The enterprise zone" shall be substituted for "this state."

SEC. 4. Section 23622 of the Revenue and Taxation Code is amended to read:

23622. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means the wages paid or incurred by the employer during the income year to qualified disadvantaged

individuals. "Qualified wages" means that portion of hourly wages which does not exceed 150 percent of the minimum wage. "Qualified wages" shall not include any wages paid or incurred on or after the date the enterprise zone designation terminates.

(2) "Qualified years one through five wages" means, with respect to any individual, qualified wages received during the 60-month period beginning with the day the individual commences employment within an enterprise zone. "Qualified years one through five wages" shall not include any wages paid of incurred on or after the date enterprise zone designation terminates.

(3) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(4) "Qualified disadvantaged individual" means an individual—

(A) Who is a qualified employee within the meaning of paragraph (5).

(B) Who is hired by the employer after the designation of the area in which services were performed as an enterprise zone (under Section 7073 of the Government Code).

(C) Who is any of the following:

(i) An individual who is eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(ii) Any individual who is eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who is eligible as determined by the Employment Development Department under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(5) "Qualified employee" means an individual who satisfies both of the following:

(A) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(B) Who performs at least 50 percent of his or her services for the taxpayer during the income year in an enterprise zone.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification which provides that a qualified individual meets the eligibility requirements specified in subparagraph (C) of paragraph (4) of subdivision (b).

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section, all employees of all corporations that are members of the same controlled group of

corporations shall be treated as employed by a single employer. In that case, the credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit. For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that—

(A) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(B) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) If the employment of any employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a

net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation, or

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) In the case of—

(1) An organization to which Section 593 of the Internal Revenue Code applies, and

(2) A regulated investment company or a real estate investment trust subject to taxation under this part

rules similar to the rules provided in subsections (e) and (h) of Section 46 of the Internal Revenue Code shall apply.

(g) For purposes of this section, "enterprise zone" means an area for which designation as an enterprise zone is in effect under Section 7073 of the Government Code.

(h) The credit shall be reduced by the credit allowed under Section 23621. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit.

(i) In the case where the credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, for the number of years in which the designation of an enterprise zone under Section 7073 of the Government Code is operative, or 15 income years, if longer, until the credit has been exhausted.

(j) The amount of the credit allowed by this section shall not in any year exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section as follows:

(1) For income years beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the enterprise zone by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the

payroll factor, and the denominator of which is two.

(2) "The enterprise zone" shall be substituted for "this state."

(k) (1) Any taxpayer claiming a credit pursuant to this section shall provide, in a form and manner specified by the Franchise Tax Board, the average number of full-time (defined as 35 hours or more per week), part-time, and seasonal employees employed by the taxpayer within an enterprise zone during the base year and during the income year.

(2) "Base year" means the later of the first income year beginning on or after January 1, 1995, or the first income year the taxpayer claims a credit, deduction, or loss attributable to business activities within the enterprise zone.

(3) In the case of a failure to provide the information specified in paragraph (1), no credit under this section shall be allowed for the income year until the information is provided.

SEC. 5. Sections 2 and 4 of this bill incorporate amendments to Sections 17053.8 and 23622 of the Revenue and Taxation Code proposed by this bill, SB 344, and SB 1438. Sections 2 and 4 shall only become operative if (1) this bill and either SB 344 or SB 1438, or both, are enacted and become effective on or before January 1, 1995, (2) this bill and either SB 344 or SB 1438, or both, amend Sections 17053.8 and 23622 of the Revenue and Taxation Code, and (3) this bill is enacted last, in which case Sections 1 and 3 of this bill shall not become operative.

SEC. 6. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the amendments made by this act shall become operative for taxable or income years beginning on or after January 1, 1995.

CHAPTER 756

An act to amend Sections 17039, 17052.15, 17053.10, 17053.17, 17276.2, 18634, 23036, 23612.6, 23623.5, 23625, and 24416.2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 22, 1994. Filed with Secretary of State September 23, 1994.]

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

SECTION 1. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net tax" means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to

personal exemption credits) and any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560. Notwithstanding the preceding sentence, the "net tax" shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against "net tax" in the following order:

(1) Credits that do not contain carryover or refundable provisions, except those described in paragraphs (4) and (5).

(2) Credits that contain carryover provisions but do not contain refundable provisions.

(3) Credits that contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(6) Credits that contain refundable provisions but do not contain carryover provisions.

The order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17053.5 (relating to the renter's credit), 17061 (relating to refunds pursuant to the Unemployment Insurance Code), and 19002 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (6) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, except the following credits, but only after allowance of the credit allowed by Section 17063—

(A) The credit allowed by former Section 17052.4 (relating to solar energy).

(B) The credit allowed by former Section 17052.5 (relating to solar energy).

(C) The credit allowed by Section 17052.5 (relating to solar energy).

(D) The credit allowed by Section 17052.12 (relating to research expenses).

(E) The credit allowed by Section 17052.13 (relating to sales and use tax credit).

(F) The credit allowed by Section 17052.15 (relating to Los Angeles Revitalization Zone sales tax credit).

(G) The credit allowed by Section 17053.5 (relating to the renter's credit).

(H) The credit allowed by Section 17053.8 (relating to enterprise zone hiring credit).

(I) The credit allowed by Section 17053.10 (relating to Los Angeles Revitalization Zone hiring credit).

(J) The credit allowed by Section 17053.11 (relating to program area hiring credit).

(K) For each taxable year beginning on or after January 1, 1994, and before January 1, 1998, the credit allowed by Section 17053.17 (relating to Los Angeles Revitalization Zone hiring credit).

(L) The credit allowed by Section 17053.49 (relating to qualified property).

(M) The credit allowed by Section 17057 (relating to clinical testing expenses).

(N) The credit allowed by Section 17058 (relating to low-income housing).

(O) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(P) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(Q) The credit allowed by Section 19002 (relating to tax withholding).

(2) Any credit which is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a credit allowed by a section which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "net tax" until the credit has been exhausted.

(e) (1) Unless otherwise provided, if two or more taxpayers (other than husband and wife) share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.

(2) In the case of a partnership, the credit may be divided among the partners pursuant to a written partnership agreement in accordance with Section 704 of the Internal Revenue Code, relating to partner's distributive share.

(3) In the case of a husband and wife who file separate returns, the credit may be taken by either or equally divided between them.

SEC. 2. Section 17052.15 of the Revenue and Taxation Code is amended to read:

17052.15. (a) For each taxable year beginning on or after January 1, 1992, and before January 1, 1998, there shall be allowed a credit against the "net tax" (as defined by Section 17039) an amount, not to exceed the limitation in subdivision (f), that is equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means a person or entity engaged in a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(2) "Qualified property" means the purchase on or after May 1, 1992, of either or both of the following:

(A) Building materials to replace or repair the taxpayer's building and fixtures.

(B) Machinery or equipment, excluding inventory, to be used by the taxpayer exclusively in the Los Angeles Revitalization Zone.

(c) (1) In the case where a credit is allowed for qualified property under more than one section in this part, the taxpayer shall make an election, on the return filed for each year, as to which section applies to that taxpayer.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(d) In the case where the credit allowed under this section exceeds the limitation imposed by subdivision (f) for the taxable year, that portion of the credit that exceeds the limitation imposed by subdivision (f) may be carried over and added to this credit in succeeding taxable years for the number of taxable years in which the designation of a zone under Section 7102 of the Government Code is operative, or 15 taxable years, if longer, until the credit is used. The credit shall be applied first to the earliest taxable years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to the sales and use tax paid or incurred in connection with the purchase of qualified property.

(f) The amount of the credit provided by this section, including any credit carryover from prior years, in any taxable year shall not exceed the amount of tax that would be imposed on the income attributable to business activities of the taxpayer within the Los Angeles Revitalization Zone (designated pursuant to Section 7102 of the Government Code) as if that attributable income represented all of the income of the taxpayer subject to tax under this part. In the event that a credit carryover is allowable under subdivision (d) for any taxable year after the Los Angeles Revitalization Zone designation has expired, the Los Angeles Revitalization Zone shall be deemed to remain in existence for purposes of computing this limitation. The amount of that attributable income shall be determined in accordance with the provisions of subdivision (g).

(g) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the zone. For that purpose, the business income of the taxpayer attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(1) For each taxable year beginning on or after January 1, 1992,

and before January 1, 1998, business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(2) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(3) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(h) If the qualified property is disposed of or no longer used by the taxpayer in the Los Angeles Revitalization Zone, at any time before the close of the second taxable year after the property is placed in service, the amount of the credit previously claimed shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(i) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (d).

SEC. 3. Section 17053.10 of the Revenue and Taxation Code is amended to read:

17053.10. (a) For each taxable year beginning on or after January 1, 1992, and before January 1, 1998, there shall be allowed as credit against the "net tax" (as defined by Section 17039) an amount not to exceed the limitation in subdivision (g), that is equal to the sum of the following:

(1) One hundred percent of the qualified wages paid or incurred during the period from May 1, 1992, to the end of the sixth full month after the designation of the Los Angeles Revitalization Zone, with respect to qualified employees that are hired during that period.

(2) Seventy-five percent of the qualified wages paid or incurred during the period from the beginning of the seventh month after designation to the end of the 12th full month after designation, with respect to qualified employees that are hired during that period.

(3) Fifty percent of the qualified wages paid or incurred during the period from the beginning of the 13th month after designation to the end of the 60th full month after designation, with respect to qualified employees that are hired during that period.

(b) For purposes of this section:

(1) "Qualified wages" means the wages paid or incurred by the employer for construction work in the Los Angeles Revitalization Zone, as designated pursuant to Section 7102 of the Government Code, during the taxable year with respect to qualified employees.

"Qualified wages" means that portion of hourly wages that does not exceed 150 percent of the minimum wage.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Qualified employee" means an individual to whom both of the following apply:

(A) Is a resident, as defined in Section 7101 of the Government Code, in the Los Angeles Revitalization Zone, as defined in Section 7102 of the Government Code.

(B) Was hired by the taxpayer to perform construction work in the Los Angeles Revitalization Zone.

(4) "Los Angeles Revitalization Zone" means the area designated under Section 7102 of the Government Code.

(5) "Construction work" means any work performed by a qualified employee directly to the erection, demolition, repair, or renovation of a structure located within the Los Angeles Revitalization Zone.

(c) If an employer acquires the major portion of a trade or business of another employer (hereafter in this subdivision referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for the purposes of applying this section for any taxable year ending after the acquisition, the employment relationship between an employee and employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(d) The credit shall be reduced by the credits allowable under Sections 17053.7, 17053.8, 17053.11, and 17053.17 claimed for the same individual. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code for the same individual.

(e) Any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of credit.

(f) In the case where the credit allowed under this section exceeds the limitation imposed by subdivision (g) for the taxable year, that portion of the credit that exceeds the limitation imposed by subdivision (g) may be carried over and added to this credit in succeeding taxable years for the number of taxable years in which the designation of a zone under Section 7102 of the Government Code is operative, or 15 taxable years, if longer, until the credit is used. The credit shall be applied first to the earliest taxable years possible.

(g) The amount of the credit allowed by this section, including any credit carryover from prior years, in any taxable year shall not exceed the amount of tax that would be imposed on the income attributable to business activities of the taxpayer within the Los Angeles Revitalization Zone (as defined in Section 7102 of the

Government Code) as if that attributable income represented all of the income of the taxpayer subject to tax under this part. In the event that a credit carryover is allowable under subdivision (f) for any taxable year after the Los Angeles Revitalization Zone designation has expired, the Los Angeles Revitalization Zone shall be deemed to remain in existence for purposes of computing this limitation. The amount of that attributable income shall be determined in accordance with the provisions of subdivision (h).

(h) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the zone. For that purpose, the business income of the taxpayer attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(1) For each taxable year beginning on or after January 1, 1992, and before January 1, 1998, business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(2) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(3) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(i) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount (determined under those regulations) equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to

perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(vi) A termination of employment due to a contractual agreement.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(j) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f).

SEC. 4. Section 17053.17 of the Revenue and Taxation Code is amended to read:

17053.17. (a) For each taxable year beginning on or after January 1, 1992, and before January 1, 1998, there shall be allowed for hiring qualified disadvantaged individuals on or after May 1, 1992, a credit against the "net tax" (as defined by Section 17039) for the taxable year in an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means the wages paid or incurred by the employer during the taxable year to qualified disadvantaged individuals. "Qualified wages" means that portion of hourly wages that does not exceed 150 percent of the minimum wage.

(2) "Qualified years one through five wages" means, with respect to any individual, qualified wages received during the 60-month

period beginning with the day the individual commences employment within the Los Angeles Revitalization Zone.

(3) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(4) "Qualified disadvantaged individual" means an individual who is a resident in the Los Angeles Revitalization Zone.

(5) "Los Angeles Revitalization Zone" means the area designated under Section 7102 of the Government Code.

(6) "Resident" means a person residing in the Los Angeles Revitalization Zone pursuant to Section 7102 of the Government Code.

(7) "Qualified employee" means an individual that meets both of the following:

(A) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in the Los Angeles Revitalization Zone.

(B) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in the Los Angeles Revitalization Zone.

(8) (A) All employees of trades or businesses, that are not incorporated, that are under common control shall be treated as employed by a single employer.

(B) The credit, if any, allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

The regulations prescribed under this subparagraph shall be based on principles similar to the principles that apply in the case of controlled groups of corporations as specified in paragraph (8) of subdivision (b) of Section 23623.5.

(9) If an employer acquires the major portion of a trade or business of another employer (hereafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for the purposes of applying this section (other than subdivision (c)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(c) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a), is terminated by the taxpayer at any time during the first 270 days of that employment, whether or not consecutive, or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount, determined under those regulations, equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to

qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(d) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated, for purposes of this part, as the employer with respect to those wages.

(e) The credit shall be reduced by the credit allowed under Sections 17053.7, 17053.8, 17053.10, and 17053.11, claimed for the same individual. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit.

(f) In the case where the credit allowed under this section exceeds the limitation imposed by subdivision (g) for the taxable year, that portion of the credit that exceeds the limitation imposed by subdivision (g) may be carried over and added to this credit in succeeding taxable years while the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code is

operative or 15 taxable years, if longer, until the credit is used. The credit shall be applied first to the earliest taxable years possible.

(g) The amount of the credit allowed by this section, including any credit carryover from prior years, in any taxable year shall not exceed the amount of tax that would be imposed on the income attributed to business activities of the taxpayer within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) as if that attributed income represented all of the income of the taxpayer subject to tax under this part. In the event that a credit carryover is allowable under subdivision (f) for any taxable year after the Los Angeles Revitalization Zone designation has expired, the Los Angeles Revitalization Zone shall be deemed to remain in existence for purposes of computing this limitation. The amount of that attributed income shall be determined in accordance with the provisions of subdivision (h).

(h) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the zone. For that purpose, the business income of the taxpayer attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section as follows:

(1) For each taxable year beginning on or after January 1, 1992, and ending on or before January 1, 1998, business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(2) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(3) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(i) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as specified in subdivision (g).

SEC. 5. Section 17276.2 of the Revenue and Taxation Code is amended to read:

17276.2. The term "qualified taxpayer" as used in Section 17276.1 means any of the following:

(a) A taxpayer engaged in the conduct of a qualified business

within a program area (as defined in Section 7082 of the Government Code).

(1) A net operating loss shall not be a net operating loss carryback to any taxable year and a net operating loss for any taxable year beginning on or after the date that the taxpayer becomes a qualified business shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code). That attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section as follows:

(i) For each taxable year beginning on or after January 1, 1991, and ending on or before December 31, 1996, loss shall be apportioned to the program area by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The program area" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code) determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section as follows:

(i) For each taxable year beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the program area by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The program area" shall be substituted for "this state."

(b) A taxpayer who is engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code on or after that designation.

(1) A net operating loss shall not be a net operating loss carryback to any taxable year and a net operating loss for any taxable year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated an enterprise zone shall be a net operating loss carryover to each following taxable year that ends before the expiration or revocation of the designation of the enterprise zone under Section 7073 of the Government Code or to each of 15 taxable years following the taxable year of loss, if longer.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government

Code). The attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section as follows:

(i) For each taxable year beginning on or after January 1, 1991, and ending on or before December 31, 1996, loss shall be apportioned to the enterprise zone by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The enterprise zone" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code) determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section as follows:

(i) For each taxable year beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the enterprise zone by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The enterprise zone" shall be substituted for "this state."

(c) A taxpayer engaged in the conduct of a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback for any taxable year, and a net operating loss for any taxable year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated the Los Angeles Revitalization Zone shall be a net operating loss carryover to each following taxable year that ends before the expiration or revocation of the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code or to each of the 15 taxable years following the taxable year of loss, if longer.

(2) For the purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the business activities of the taxpayer within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code). The attributable loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(i) For each taxable year beginning on or after January 1, 1992, and ending before January 1, 1998, loss shall be apportioned to the Los Angeles Revitalization Zone by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The Los Angeles Revitalization Zone" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with

respect to income attributed to the business activities of the taxpayer within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) determined in accordance with the provisions of paragraph (3).

(3) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the zone. For that purpose, the business income of the taxpayer attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(i) For each taxable year beginning on or after January 1, 1992, and before January 1, 1998, income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(iii) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(4) This subdivision shall cease to be operative on January 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this subdivision until the net operating loss has been used.

(d) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, a taxpayer engaged in the conduct of a trade or business within a LAMBRA.

(1) A net operating loss shall not be a net operating loss carryback for any taxable year, and a net operating loss for any taxable year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated a LAMBRA shall be a net operating loss carryover to each following taxable year that ends before the expiration or revocation of the designation of a LAMBRA under Section 7116 of the Government Code or to each of the 15 taxable years following the taxable year of loss, if longer.

(2) For the purposes of this subdivision:

(A) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(B) "Taxpayer" means a taxpayer or partnership that conducts a trade or business within a LAMBRA and, for the first two taxable

years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(i) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(ii) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(I) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(II) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(iii) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of subclauses (I) and (II), respectively, of clause (ii) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(C) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the business activities of the taxpayer within a LAMBRA. The attributable loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(i) For each taxable year beginning on or after January 1, 1995, loss shall be apportioned to a LAMBRA by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The LAMBRA" shall be substituted for "this state."

(D) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within a LAMBRA determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(i) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, income shall be apportioned to a LAMBRA by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The LAMBRA" shall be substituted for "this state."

(iii) If a loss carryover is allowable pursuant to this section for any taxable year after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing this limitation.

(e) A taxpayer who qualifies as a "qualified taxpayer" shall, for the taxable year of the net operating loss and any taxable year to which that net operating loss may be carried, designate on the return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account subdivision (f).

(f) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in a taxable year, the taxpayer shall designate which subdivision of this section is to apply to the taxpayer.

(g) Notwithstanding Section 17276, the amount of the loss determined under this section shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (e) shall be included in the election under Section 17276.1.

SEC. 6. Section 18634 of the Revenue and Taxation Code is amended to read:

18634. (a) Any taxpayer determining its income subject to tax pursuant to Section 25101 or making the election under Section 25110 shall file with the Franchise Tax Board within six months after the due date (including extensions) of the bank's or corporation's California return required under this part an information return if it and its related banks' or corporation's total assets exceed two hundred million dollars ($200,000,000), or such higher levels as may be subsequently established by regulation.

(b) The information return shall be filed once every three years, unless there is a substantial change in the taxpayer's business activities, in which case it shall be filed for the year in which the change occurs.

(c) For purposes of this section, banks and corporations are related if more than 50 percent of the voting stock of one is directly or indirectly owned or controlled by the other or if more than 50 percent of the voting stock of both is directly or indirectly owned or controlled by the same interest.

(d) The information return shall identify the corporate parent and those affiliates of which more than 20 percent of the voting stock is directly or indirectly owned or controlled by the parent. The information return shall identify the percentage of ownership and the type of corporation (foreign organized, United States organized, Foreign Sales Corporation, or other relevant descriptions).

(e) If the taxpayer willfully fails to substantially comply with this section, the taxpayer shall be subject to the penalty described in

paragraph (1) of subdivision (c) of Section 19141.6.

(f) This section shall not apply to any bank or corporation with regard to any year if that bank's or corporation's payroll, property, and sales within the United States are each less than five hundred thousand dollars ($500,000).

SEC. 7. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term "tax" includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term "tax" does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 23081.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits which do not contain carryover provisions.

(2) Credits which, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit allowed by Section 23453—

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to

solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(I) The credit allowed by Section 23622 (relating to enterprise zone hiring credit).

(J) The credit allowed by Section 23623 (relating to program area hiring credit).

(K) For each income year beginning on or after January 1, 1994, and before January 1, 1998, the credit allowed by Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).

(L) The credit allowed by Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(M) The credit allowed by Section 23649 (relating to qualified property).

(N) Credits for taxes withheld under Section 18662.

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "tax" until the credit has been exhausted.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred.

SEC. 8. Section 23612.6 of the Revenue and Taxation Code is amended to read:

23612.6. (a) For each income year beginning on or after January 1, 1992 and before January 1, 1998, there shall be allowed a credit against the "tax" (as defined by Section 23036) for the income year an amount, not to exceed the limitation of subdivision (g), but otherwise equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means a bank or corporation engaged in a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(2) "Qualified property" means the purchase on or after May 1, 1992, of either or both of the following:

(A) Building materials to replace or repair the taxpayer's building and fixtures.

(B) Machinery or equipment, excluding inventory, to be used by the taxpayer exclusively in the Los Angeles Revitalization Zone.

(c) (1) In the case where a credit is allowed for qualified property under more than one section in this part, the taxpayer shall make an election, on the return filed for each year, as to which section applies to that taxpayer.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(d) In the case where the credit allowed under this section exceeds the limitation imposed by subdivision (f) for the income year, that portion of the credit that exceeds the limitation imposed by subdivision (f) may be carried over and added to this credit in succeeding income years for the number of income years in which the designation of a zone under Section 7102 of the Government Code is operative, or 15 income years, if longer, until the credit is used. The credit shall be applied first to the earliest income year possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to the sales and use tax paid or incurred in connection with the purchase of qualified property.

(f) The amount of the credit provided by this section, including any credit carryover from prior years, in any income year shall not exceed the amount of tax which would be imposed on the income attributable to business activities of the taxpayer within the Los Angeles Revitalization Zone (designated pursuant to Section 7102 of the Government Code) as if that attributable income represented all of the income of the taxpayer subject to tax under this part. In the event that a credit carryover is allowable under subdivision (d) for any income year after the Los Angeles Revitalization Zone designation has expired, the Los Angeles Revitalization Zone shall be deemed to remain in existence for purposes of computing this limitation. The amount of that attributable income shall be determined in accordance with the provisions of subdivision (g).

(g) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the zone. For that purpose, the business income of the taxpayer attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the zone in

accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified as follows:

(1) For each income year beginning on or after January 1, 1992 and before January 1, 1998, business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(2) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the income year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(3) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(h) If the qualified property is disposed of or no longer used by the taxpayer in the Los Angeles Revitalization Zone, at any time before the close of the second income year after the property is placed in service, the amount of the credit previously claimed shall be added to the taxpayer's tax liability in the income year of that disposition or nonuse.

(i) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (d).

SEC. 9. Section 23623.5 of the Revenue and Taxation Code is amended to read:

23623.5. (a) For each income year beginning on or after January 1, 1992, and before January 1, 1998, there shall be allowed for hiring qualified disadvantaged individuals on or after May 1, 1992, a credit against the "tax" (as defined by Section 23036) in an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means the wages paid or incurred by the employer during the income year to qualified disadvantaged

individuals. "Qualified wages" means that portion of hourly wages that does not exceed 150 percent of the minimum wage.

(2) "Qualified years one through five wages" means, with respect to any individual, qualified wages received during the 60-month period beginning with the day the individual commences employment within the Los Angeles Revitalization Zone.

(3) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(4) "Qualified disadvantaged individual" means an individual who is a resident in the Los Angeles Revitalization Zone.

(5) "Los Angeles Revitalization Zone" means the area designated under Section 7102 of the Government Code.

(6) "Resident" means a person residing in the Los Angeles Revitalization Zone pursuant to Section 7102 of the Government Code.

(7) For purposes of this section, "qualified employee" means an individual that meets both of the following:

(A) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in the Los Angeles Revitalization Zone.

(B) Who performs at least 50 percent of his or her services for the taxpayer during the income year in the Los Angeles Revitalization Zone.

(8) (A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single employer. In any such case, the credit, if any, allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit. For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of the Internal Revenue Code.

(B) If an employer acquires the major portion of a trade or business of another employer (hereafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for the purposes of applying this section (other than subdivision (c)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(c) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a), is terminated by the taxpayer at any time during the first 270 days

of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(d) In the case of an organization to which Section 593 of the Internal Revenue Code applies, and a regulated investment company or a real estate investment trust subject to taxation under this part, rules similar to the rules provided in Sections 46(e) and 46(h) of the Internal Revenue Code shall apply.

(e) The credit shall be reduced by the credit allowed under Sections 23621, 23622, 23623, and 23625, claimed for the same individual. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit.

(f) In the case where the credit allowed under this section exceeds the limitation imposed by subdivision (g) for the income year, that portion of the credit that exceeds the limitation imposed by subdivision (g) may be carried over and added to this credit in succeeding income years while the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code is operative or 15 income years, if longer, until the credit is used. The credit shall be applied first to the earliest income years possible.

(g) The amount of the credit allowed by this section, including any credit carryover from prior years, in any income year shall not exceed the amount of tax that would be imposed on the income attributed to business activities of the taxpayer within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code). In the event that a credit carryover is allowable under subdivision (f) for any income year after the Los Angeles Revitalization Zone designation has expired, the Los Angeles Revitalization Zone shall be deemed to remain in existence for purposes of computing this limitation. The amount of that attributed income shall be determined in accordance with the provisions of subdivision (h).

(h) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the zone. For that purpose, the business income of the taxpayer attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section as follows:

(1) For each income year beginning on or after January 1, 1992, and ending on or before January 1, 1998, business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(2) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the income year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(3) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer

in this state during the income year.

(i) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as specified in subdivision (g).

SEC. 10. Section 23625 of the Revenue and Taxation Code is amended to read:

23625. (a) For each income year beginning on or after January 1, 1992, and before January 1, 1998, there shall be allowed as credit against the "tax" (as defined by Section 23036) an amount, not to exceed the limitation in subdivision (g), that is equal to the sum of the following:

(1) One hundred percent of the qualified wages paid or incurred during the period from May 1, 1992, to the end of the sixth full month after the designation of the Los Angeles Revitalization Zone with respect to qualified employees that are hired during that period.

(2) Seventy-five percent of the qualified wages paid or incurred during the period from the beginning of the seventh month after designation to the end of the 12th full month after designation with respect to qualified employees that are hired during that period.

(3) Fifty percent of the qualified wages paid or incurred during the period from the beginning of the 13th month after designation to the end of the 60th full month after designation with respect to qualified employees that are hired during that period.

(b) For purposes of this section:

(1) "Qualified wages" means the wages paid or incurred by the employer for construction work in the Los Angeles Revitalization Zone, as designated pursuant to Section 7102 of the Government Code, during the income year with respect to qualified employees. "Qualified wages" means that portion of hourly wages which does not exceed 150 percent of the minimum wage.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Qualified employee" means an individual to whom both of the following apply:

(A) Is a resident in the Los Angeles Revitalization Zone, as defined in Section 7101 of the Government Code.

(B) Was hired by the taxpayer to perform construction work in the Los Angeles Revitalization Zone, as defined in Section 7102 of the Government Code.

(4) "Los Angeles Revitalization Zone" means the area designated under Section 7102 of the Government Code.

(5) "Construction work" means any work performed by a qualified employee directly related to the erection, demolition, repair, or renovation of a structure located within the Los Angeles Revitalization Zone.

(c) If an employer acquires the major portion of a trade or business of another employer (hereafter in this subdivision referred

to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for the purposes of applying this section for any income year ending after the acquisition, the employment relationship between an employee and employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(d) The credit shall be reduced by the credits allowable under Sections 23621 to 23623.5, inclusive, claimed for the same individual. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code for the same individual.

(e) Any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of credit.

(f) In the case where the credit allowed under this section exceeds the limitation imposed by subdivision (g) for the income year, that portion of the credit that exceeds the limitation imposed by subdivision (g) may be carried over and added to this credit in succeeding income years for the number of income years in which the designation of a zone under Section 7102 of the Government Code is operative, or 15 income years, if longer, until the credit is used. The credit shall be applied first to the earliest income year possible.

(g) The amount of the credit allowed by this section, including any credit carryover from prior years, in any income year shall not exceed the amount of tax that would be imposed on the income attributable to business activities of the taxpayer within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) as if that attributable income represented all of the income of the taxpayer subject to tax under this part. In the event that a credit carryover is allowable under subdivision (f) for any income year after the Los Angeles Revitalization Zone designation has expired, the Los Angeles Revitalization Zone shall be deemed to remain in existence for purposes of computing this limitation. The amount of that attributable income shall be determined in accordance with the provisions of subdivision (h).

(h) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the zone. For that purpose, the business income of the taxpayer attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(1) For each income year beginning on or after January 1, 1992, and before January 1, 1998, business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(2) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the income year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(3) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(i) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount (determined under those regulations) equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(vi) A termination of employment due to a contractual agreement.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a

substantial interest in that trade or business.

(j) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f).

SEC. 11. Section 24416.2 of the Revenue and Taxation Code is amended to read:

24416.2. The term "qualified taxpayer" as used in Section 24416.1 means any of the following:

(a) A taxpayer engaged in the conduct of a qualified business within a program area (as defined in Section 7082 of the Government Code).

(1) A net operating loss shall not be a net operating loss carryback for any income year and a net operating loss for any income year beginning on or after the date that the taxpayer becomes a qualified business shall be a net operating loss carryover to each of the 15 income years following the income year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code). That attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section as follows:

(i) For each income year beginning on or after January 1, 1991, and ending on or before December 31, 1996, loss shall be apportioned to the program area by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The program area" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code) determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section as follows:

(i) For each income year beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the program area by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The program area" shall be substituted for "this state."

(b) A taxpayer who is engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code on or after that designation.

(1) (A) A net operating loss shall not be a net operating loss carryback to any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date that the area in which the taxpayer

conducts a trade or business is designated an enterprise zone shall be a net operating loss carryover to each following income year that ends before the expiration or revocation of the designation of the enterprise zone under Section 7073 of the Government Code or to each of 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five income years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code). The attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section as follows:

(i) For each income year beginning on or after January 1, 1991, and ending on or before December 31, 1996, loss shall be apportioned to the enterprise zone by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The enterprise zone" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code) determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section as follows:

(i) For each income year beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the enterprise zone by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The enterprise zone" shall be substituted for "this state."

(c) A taxpayer engaged in the conduct of a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(1) (A) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated the Los Angeles Revitalization Zone shall be a net operating loss carryover to each following income year that ends before the expiration or revocation of the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code or to each of the 15 income

years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For the purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the business activities of the taxpayer within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code). The attributable loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120), modified as follows:

(i) The loss shall be apportioned to the Los Angeles Revitalization Zone by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The Los Angeles Revitalization Zone" shall be substituted for this state.

(B) A net operating loss carryover shall be a deduction only with respect to income attributable to the business activities of the taxpayer within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) determined in accordance with the provisions of paragraph (3).

(3) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the zone. For that purpose, the business income of the taxpayer attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 , modified as follows:

(i) For each income year beginning on or after January 1, 1992, and before January 1, 1998, business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the income year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(iii) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the income year for compensation, and the

denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(4) This subdivision shall cease to be operative on January 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this subdivision until the net operating loss has been used.

(d) For each income year beginning on or after January 1, 1995, and before January 1, 2003, a taxpayer engaged in the conduct of a trade or business within a LAMBRA.

(1) (A) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated a LAMBRA shall be a net operating loss carryover to each following income year that ends before the expiration or revocation of the designation of a LAMBRA under Section 7116 of the Government Code or to each of the 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For the purposes of this subdivision:

(A) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(B) "Taxpayer" means a bank or corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(i) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(ii) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(I) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee)

who are paid an hourly wage divided by 2,000.

(II) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(iii) In the case of a taxpayer that first commences doing business in the LAMBRA during the income year, for purposes of subclauses (I) and (II), respectively, of clause (ii) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(C) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the business activities of the taxpayer within a LAMBRA. The attributable loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120), modified as follows:

(i) For each income year beginning on or after January 1, 1995, the loss shall be apportioned to a LAMBRA by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The LAMBRA" shall be substituted for "this state."

(D) A net operating loss carryover shall be a deduction only with respect to income attributable to the business activities of the taxpayer within a LAMBRA determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(i) For each income year beginning on or after January 1, 1995, and before January 1, 2003, income shall be apportioned to a LAMBRA by multiplying total income from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(ii) "The LAMBRA" shall be substituted for "this state."

(iii) If a loss carryover is allowable pursuant to this section for any income year after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing this limitation.

(e) A taxpayer who qualifies as a "qualified taxpayer" shall, for the income year of the net operating loss and any income year to which that net operating loss may be carried, designate on the return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account subdivision (f).

(f) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall designate which subdivision of this section is to apply to the taxpayer.

(g) Notwithstanding Section 24416, the amount of the loss determined under Section 24416.1 shall be the only net operating loss

allowed to be carried over from that income year and the designation under subdivision (e) shall be included in the election under Section 24416.1.

SEC. 12. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 757

An act to add Section 15317 to the Government Code, relating to trade and commerce.

[Approved by Governor September 22, 1994. Filed with Secretary of State September 23, 1994.]

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) The apparel industry employs approximately 140,000 people in California in more than 3,600 firms. This comprises the second largest concentration of apparel manufacture in the United States. Apparel manufacture is based in clusters in both northern and southern California.

(2) The apparel industry employs a large, diverse concentration of low-skilled minority workers and provides a path out of poverty for those with low skills. Apparel manufacturing firms, contractors, and wholesalers tend to be entrepreneurial businesses with less than 40 employees.

(3) Joint business, labor, and community action can resolve the human resource challenges that have threatened the apparel industry's competitive position and remove both the reality and stigma of sweatshop conditions.

(4) Facing intense domestic and international competition, the apparel industry cannot survive by competing on costs alone. The industry must improve the quality, flexibility, and speed with which it responds to the market, resolve regulatory issues expediently, and promote its unique capabilities throughout the world's markets.

(5) The Trade and Commerce Agency has provided the apparel industry in this state with assistance and promotion through the establishment of a multilevel training plan that includes programs regarding contractor compliance, process streamlining, and high technology training. The Legislature encourages the Trade and Commerce Agency to continue to support the industry's growth, economic health, and status as a major manufacturing employment source.

(b) This act shall be known as and may be cited as the California Apparel Industry Revitalization Act of 1994.

SEC. 2. Section 15317 is added to the Government Code, to read:

15317. The secretary shall direct all relevant components of the Trade and Commerce Agency to coordinate resources within the agency and other state agencies for all of the following purposes:

(a) To act as a regulatory ombudsman for the apparel industry in disputes with state and local government.

(b) To focus state resources that can be applied to the deployment and development of advanced technologies to improve the productivity of the California apparel industry.

(c) To support locally provided training programs for apparel workers, contractors, manufacturers, and other industry participants.

(d) To determine how best to make available to apparel manufacturers and contractors additional financial resources for these purposes through the existing loan and grant programs of the agency and other state and local economic development programs.

(e) To promote actively the products of California's apparel industry domestically and internationally.

CHAPTER 758

An act to add Chapter 6.6 (commencing with Section 1695) to Division 2 of the Health and Safety Code, relating to medicine.

[Approved by Governor September 22, 1994. Filed with Secretary of State September 23, 1994.]

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

SECTION 1. Chapter 6.6 (commencing with Section 1695) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 6.6. NEONATAL GROUP B STREPTOCOCCAL INFECTION

1695. To the extent that funds are available in the State Department of Health Services' budget for the 1994–95 fiscal year for this purpose, the department shall convene a consensus conference to address the issue of testing or treatment to prevent neonatal group B streptococcal disease (chemoprophylaxis). The conferees shall include, but not be limited to, representation from the California Chapter of the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists District IX, the California Medical Association, the California Conference of Local Health Officers, and the Group B Strep Association. The conference shall convene at least once during the 1994–95 fiscal year. The department shall develop, based on the proceedings of the consensus conference, a standardized written summary on group B streptococcal disease and guidelines on the prevention of neonatal group B streptococcal disease, no later than July 1, 1995. If the department determines that

state funds are not available, the department shall make every effort to obtain appropriate federal funds for this purpose.

CHAPTER 759

An act to add Section 1367.69 to the Health and Safety Code, and to add Sections 10123.83 and 11512.295 to the Insurance Code, relating to health coverage.

[Approved by Governor September 22, 1994. Filed with Secretary of State September 23, 1994.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The specialty of obstetrics and gynecology is devoted to primary-preventive health care of women throughout their lifetime.

(b) Significant numbers of women view their obstetrician-gynecologist as their primary or only physician. For many women, an obstetrician-gynecologist is often the only physician they see regularly during their reproductive years. According to a 1993 Gallup poll, women are more likely to have had a physical examination within the last two years from an obstetrician-gynecologist than from any other type of doctor (72 percent versus 57 percent) and the majority of these women (52 percent) consider their obstetrician-gynecologist to be their primary care physician.

(c) A general medical examination was the second most frequently cited purpose for patient visits to obstetrician-gynecologists in 1989 and 1990, accounting for seven million visits each year, according to data gathered by the National Center for Health Statistics.

(d) Women are opposed to restrictions in accessing obstetrician-gynecologists. Among women who have health coverage, a Gallup poll reported that 78 percent can currently access their obstetrician-gynecologist without going through a "gatekeeper." Seventy-five percent of these women would object to requirements that they be referred by another physician or "gatekeeper" before they may see their obstetrician-gynecologist. Similarly, 74 percent of those who now have restricted access to obstetrician-gynecologists would approve of a system that would eliminate the need for a referral.

(e) Obstetrician-gynecologists refer their patients less frequently than other primary care physicians, thus avoiding costly and time consuming referrals to specialists. According to a 1991 study of physician referral rates, obstetrician-gynecologists had the lowest referral rate of 4 percent compared with the rates of 7.3 percent for

general internists and 8.4 percent for general and family practitioners.

(f) More than two-thirds (69.5 percent) of all visits to obstetrician-gynecologists were made by established patients of the physician returning for care of their condition, according to data gathered by the National Center for Health Statistics. Only 4.7 percent of patient visits resulted from referrals from another physician.

SEC. 2. Section 1367.69 is added to the Health and Safety Code, to read:

1367.69. (a) On or after January 1, 1995, every health care service plan contract that provides hospital, medical, or surgical coverage, that is issued, amended, delivered, or renewed in this state, shall include obstetrician-gynecologists as eligible primary care physicians, provided they meet the plan's eligibility criteria for all specialists seeking primary care physician status.

(b) For purposes of this section, the term "primary care physician" means a physician, as defined in Section 14254 of the Welfare and Institutions Code, who has the responsibility for providing initial and primary care to patients, for maintaining the continuity of patient care, and for initiating referral for specialist care. This means providing care for the majority of health care problems, including, but not limited to, preventive services, acute and chronic conditions, and psychosocial issues.

SEC. 3. Section 10123.83 is added to the Insurance Code, to read:

10123.83. (a) On or after January 1, 1995, every policy of disability insurance that covers hospital, medical, or surgical expenses and is issued, amended, delivered, or renewed in this state shall include obstetrician-gynecologists as primary care providers provided they meet the insurer's written eligibility criteria for all specialists seeking primary care physician status.

(b) For purposes of this section, the term "primary care physician" means a physician, as defined in Section 14254 of the Welfare and Institutions Code, who has the responsibility for providing initial and primary care to patients, for maintaining the continuity of patient care, and for initiating referral for specialist care. This means providing care for the majority of health care problems, including, but not limited to, preventive services, acute and chronic conditions, and psychosocial issues.

SEC. 4. Section 11512.295 is added to the Insurance Code, immediately following Section 11512.29, to read:

11512.295. (a) On or after January 1, 1995, every nonprofit hospital service plan contract that provides hospital, medical, or surgical coverage, that is issued, amended, delivered, or renewed in this state, shall include obstetrician-gynecologists as primary care providers provided they meet the plan's written eligibility criteria for all specialists seeking primary care physician status.

(b) For purposes of this section, the term "primary care physician" means a physician, as defined in Section 14254 of the

Welfare and Institutions Code, who has the responsibility for providing initial and primary care to patients, for maintaining the continuity of patient care, and for initiating referral for specialist care. This means providing care for the majority of health care problems, including, but not limited to, preventive services, acute and chronic conditions, and psychosocial issues.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 760

An act to add Chapter 1.3 (commencing with Section 135) to Part 1 of Division 1 of the Health and Safety Code, relating to women's health.

[Approved by Governor September 22, 1994. Filed with Secretary of State September 23, 1994.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The health status of women has significant bearing on the well-being of children, other family members, and the state's economy.

(b) Women's health issues, which include diseases or conditions that are unique to women, more prevalent or more serious in women, or for which specific risk factors or interventions differ for women, have received scant attention both in terms of funding for prevention and treatment services, as well as for research.

(c) There is growing recognition on the part of state and national policymakers of the importance of equity in policy considerations and decisions affecting women's health, and particularly in the administration, funding, and delivery of medical care and health care-related services for women.

(d) There is increasing acknowledgment among the biomedical and health service research communities of systematic biases in the development of basic and applied research directly affecting women's health, and of significant disparities in the use of major diagnostic and therapeutic interventions for women in comparison

with men.

(e) Certain women's health problems, specifically, menopause, osteoporosis, and breast and cervical cancers, have recently received increased attention and resources nationally and within California.

(f) Violence is overwhelming our health care and mental health systems. Each year, over 1,000,000 women seek medical assistance for injuries caused by domestic violence. More than one in every three trips by women to an emergency room are the result of battery by their husbands or partners, and one out of four pregnant women seeking prenatal care have been abused.

(g) Teenage pregnancy has had a large impact on the health care delivery system. In 1992, there were 70,867 infants born to teenage mothers in California alone. Adolescent mothers are less likely to receive effective prenatal care, consequently their babies are more likely to suffer health problems.

(h) Women's advocacy groups have recommended that an Office of Women's Health and a statewide Interagency Task Force on Women's Health be established to provide the visibility, prominence, and coordination that women's health issues should command.

(i) A more comprehensive and effective approach to improving women's health problems will require an improved understanding of, and increased focus on, the social, political, and economic forces that affect the health of women.

SEC. 2. Chapter 1.3 (commencing with Section 135) is added to Part 1 of Division 1 of the Health and Safety Code, to read:

CHAPTER 1.3. WOMEN'S HEALTH

135. The Office of Women's Health is hereby established within the State Department of Health Services. For purposes of this chapter, "office" means the Office of Women's Health.

136. (a) The Health and Welfare Agency shall establish an interagency task force on women's health composed of representatives of the State Department of Health Services, the State Department of Developmental Services, the State Department of Social Services, the State Department of Alcohol and Drug Programs, and the Major Risk Medical Insurance Program.

(b) The State Department of Education, the Department of Housing and Community Development, the office of the Attorney General, the State Department of Mental Health, and the Department of Corrections may participate with the interagency task force on women's health when necessary to implement the state strategy developed pursuant to Section 137.

137. The office, in consultation with the interagency task force on women's health, shall develop a coordinated state strategy for addressing the health related needs of women.

138. The office may do any of the following:

(a) Perform strategic planning within the state department to develop departmentwide plans for implementation of goals and

objectives for women's health.

(b) Conduct departmental policy analysis on specific issues related to women's health.

(c) Coordinate pilot projects and planning projects funded by the state that are related to women's health.

(d) Identify unnecessary duplication of services and future service needs.

(e) Communicate and disseminate information and perform a liaison function within the state department and to providers of health, social, educational, and support services to women.

(f) Perform internal state department staff training, and training of health care professionals to ensure more linguistically and culturally appropriate care.

(g) Serve as a clearinghouse for information regarding women's health data, strategies, and programs that address women's health issues, including pregnancy, breast and cervical cancers, AIDS, osteoporosis, and menopause, as well as issues that impact women's health, including substance abuse, domestic violence, housing, teenage pregnancy, and sexual assault.

(h) Encourage innovative responses by public and private entities that are attempting to address women's health issues.

(i) Provide technical assistance to counties, other public entities, and private entities seeking to obtain funds for initiatives in women's health, including identification of sources of funding and assistance with writing of grants.

CHAPTER 761

An act to amend, repeal, and add Section 1374.7 of the Health and Safety Code, and to amend, repeal, and add Sections 10123.3, 10140, and 11512.95 of, and to add Article 2.6 (commencing with Section 10146) to Chapter 1 of Part 2 of Division 2 of, the Insurance Code, relating to discrimination.

[Approved by Governor September 22, 1994. Filed with Secretary of State September 23, 1994.]

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

SECTION 1. Section 1374.7 of the Health and Safety Code is amended to read:

1374.7. (a) No plan shall refuse to enroll any person or accept any person as a subscriber after appropriate application on the basis of a person's genetic characteristics which may, under some circumstances, be associated with disability in that person or that person's offspring. No plan shall require a higher rate or charge on the basis of a person's genetic characteristics.

(b) No discrimination shall be made in the fees or commissions of

a solicitor or solicitor firm for an enrollment or a subscription or the renewal of an enrollment or subscription of any person on the basis of a person's genetic characteristics which may, under some circumstances, be associated with disability in that person or that person's offspring.

(c) "Genetic characteristics" as used in this section means any scientifically or medically identifiable gene or chromosome, or alteration thereof, which is known to be a cause of a disease or disorder, or determined to be associated with a statistically increased risk of development of a disease or disorder, and which is asymptomatic of any disease or disorder.

(d) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 2. Section 1374.7 is added of the Health and Safety Code, to read:

1374.7. (a) No plan shall refuse to enroll any person or accept any person as a subscriber after appropriate application by reason of the fact that the person carries a gene which may, under some circumstances, be associated with disability in that person's offspring, but which causes no adverse effects on the carrier. Such genes shall include, but are not limited to, Tay-Sachs trait, sickle cell trait, thalassemia trait, and X-linked hemophilia A. No plan shall require a higher rate or charge by reason of the fact that the person carries such traits than is at that time required of any other individual in an otherwise identical classification, nor shall any plan make or require any rebate, discrimination, or discount upon the amount to be paid or the service to be rendered under the plan because the person carries such traits.

(b) No discrimination shall be made in the fees or commissions of a solicitor or solicitor firm for an enrollment or a subscription or the renewal of an enrollment or subscription of any person by reason of the fact that the person carries a gene which may, under some circumstances, be associated with disability in that person's offspring, but which causes no adverse effects on the carrier. Such genes shall include, but are not limited to, Tay-Sachs trait, sickle cell trait, thalassemia trait, and X-linked hemophilia A.

(c) This section shall become operative on January 1, 2002.

SEC. 3. Section 10123.3 of the Insurance Code is amended to read:

10123.3. (a) No self-insured employee welfare benefit plan shall refuse to enroll any person or accept any person as a subscriber after appropriate application on the basis of a person's genetic characteristics which may, under some circumstances, be associated with disability in that person or that person's offspring. No plan shall require a higher rate or charge on the basis of a person's genetic characteristics than is at the time required of any other individual in an otherwise identical classification, nor shall any plan make or require any rebate, discrimination, or discount upon the amount to

be paid or the service to be rendered under the plan because the person carries those traits.

(b) No discrimination shall be made in the fees or commissions of a solicitor or solicitor firm for an enrollment or a subscription or the renewal of an enrollment or subscription of any person on the basis of a person's genetic characteristics which may, under some circumstances, be associated with disability in that person or that person's offspring.

(c) "Genetic characteristics" as used in this section shall have the same meaning as defined in Section 10147.

(d) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 4. Section 10123.3 is added to the Insurance Code, to read:

10123.3. (a) No self-insured employee welfare benefit plan shall refuse to enroll any person or accept any person as a subscriber after appropriate application by reason of the fact that the person carries a gene which may, under some circumstances, be associated with disability in that person's offspring, but which causes no adverse effects on the carrier. Such genes shall include, but not be limited to, Tay-Sachs trait, sickle cell trait, thalassemia trait, and X-linked hemophilia A. No plan shall require a higher rate or charge by reason of the fact that the person carries such traits than is at the time required of any other individual in an otherwise identical classification, nor shall any plan make or require any rebate, discrimination, or discount upon the amount to be paid or the service to be rendered under the plan because the person carries such traits.

(b) No discrimination shall be made in the fees or commissions of a solicitor or solicitor firm for an enrollment or a subscription or the renewal of an enrollment or subscription of any person by reason of the fact that the person carries a gene which may, under some circumstances, be associated with disability in that person's offspring, but which causes no adverse effects on the carrier. Such genes shall include, but not be limited to, Tay-Sachs trait, sickle cell trait, thalassemia trait, and X-linked hemophilia A.

(c) This section shall become operative on January 1, 2002.

SEC. 5. Section 10140 of the Insurance Code is amended to read:

10140. (a) No admitted insurer, licensed to issue life or disability insurance, shall fail or refuse to accept an application for that insurance, to issue that insurance to an applicant therefor, or issue or cancel that insurance, under conditions less favorable to the insured than in other comparable cases, except for reasons applicable alike to persons of every race, color, religion, national origin, ancestry, or sexual orientation. Race, color, religion, national origin, ancestry, or sexual orientation shall not, of itself, constitute a condition or risk for which a higher rate, premium, or charge may be required of the insured for that insurance.

(b) Except as otherwise permitted by law, no admitted insurer, licensed to issue disability insurance policies for hospital, medical,

and surgical expenses, shall fail or refuse to accept an application for that insurance, fail or refuse to issue that insurance to an applicant therefor, cancel that insurance, charge a higher rate or premium for that insurance, or place a limitation on coverage under that insurance, on the basis of a person's genetic characteristics which may, under some circumstances, be associated with disability in that person or that person's offspring. This subdivision shall not apply to life and disability income policies issued or delivered on or after January 1, 1995, that are contingent upon review or testing for other diseases or medical conditions.

(c) No discrimination shall be made in the fees or commissions of agents or brokers for writing or renewing a policy of disability insurance, other than disability income, on the basis of a person's genetic characteristics which may, under some circumstances, be associated with disability in that person or that person's offspring.

(d) It shall be deemed a violation of subdivision (a) for any insurer to consider sexual orientation in its underwriting criteria or to utilize marital status, living arrangements, occupation, gender, beneficiary designation, zip codes or other territorial classification within this state, or any combination thereof for the purpose of establishing sexual orientation or determining whether to require a test for the presence of the human immunodeficiency virus or antibodies to that virus, where that testing is otherwise permitted by law. Nothing in this section shall be construed to alter, expand, or limit in any manner the existing law respecting the authority of insurers to conduct tests for the presence of human immunodeficiency virus or evidence thereof.

(e) Any insurer that knowingly violates this section shall for each violation be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) plus court costs, as determined by the court.

(f) This section shall not be construed to limit the authority of the commissioner to adopt regulations prohibiting discrimination because of sex, marital status, or sexual orientation or to enforce these regulations, whether adopted before or on or after January 1, 1991.

(g) "Genetic characteristics" as used in this section shall have the same meaning as defined in Section 10147.

(h) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 6. Section 10140 is added to the Insurance Code, to read:

10140. (a) No admitted insurer, licensed to issue life or disability insurance, shall fail or refuse to accept an application for that insurance, to issue that insurance to an applicant therefor, or issue or cancel that insurance, under conditions less favorable to the insured than in other comparable cases, except for reasons applicable alike to persons of every race, color, religion, national origin, ancestry, or sexual orientation. Race, color, religion, national origin, ancestry, or sexual orientation shall not, of itself, constitute a condition or risk for

which a higher rate, premium, or charge may be required of the insured for that insurance.

(b) It shall be deemed a violation of subdivision (a) for any insurer to consider sexual orientation in its underwriting criteria or to utilize marital status, living arrangements, occupation, gender, beneficiary designation, ZIP Codes or other territorial classification within this state, or any combination thereof for the purpose of establishing sexual orientation or determining whether to require a test for the presence of the human immunodeficiency virus or antibodies to that virus, where that testing is otherwise permitted by law. Nothing in this section shall be construed to alter, expand, or limit in any manner the existing law respecting the authority of insurers to conduct tests for the presence of human immunodeficiency virus or evidence thereof.

(c) Any insurer that knowingly violates this section shall for each violation be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) plus court costs, as determined by the court.

(d) This section shall not be construed to limit the authority of the commissioner to adopt regulations prohibiting discrimination because of sex, marital status, or sexual orientation or to enforce these regulations, whether adopted before or on or after January 1, 1991.

(e) This section shall become operative on January 1, 2002.

SEC. 7. Article 2.6 (commencing with Section 10146) is added to Chapter 1 of Part 2 of Division 2 of the Insurance Code, to read:

Article 2.6. Underwriting on the Basis of Test of Genetic Characteristics

10146. The purposes of this article are to establish standards regarding unfair discrimination among individuals of the same class in the underwriting of life or disability income insurance on the basis of tests of a person's genetic characteristics; to establish minimum standards for determining insurability which are sufficiently reliable to be used for life and disability income insurance risk classification and underwriting purposes; to require the maintenance of strict confidentiality of personal information obtained through a test of a person's genetic characteristics; and to require informed consent before insurers underwrite on the basis of a test of a person's genetic characteristics. This article and Sections 10140 and 10143 shall constitute the exclusive requirements for insurers' practices relating to genetic characteristics or to tests thereof.

10147. As used in this article:

(a) "Disability income insurance" means insurance against loss of occupational earning capacity arising from injury, sickness, or disablement, and includes insurance which provides benefits for overhead expenses of a business or profession when the insured becomes disabled.

(b) "Genetic characteristics" means any scientifically or

medically identifiable gene or chromosome, or alteration thereof, which is known to be a cause of a disease or disorder, or determined to be associated with a statistically increased risk of development of a disease or disorder, and which is asymptomatic of any disease or disorder.

(c) "Life or disability income insurer" means an insurer licensed to transact life insurance or disability income insurance in this state or a fraternal benefit society licensed in this state.

(d) "Policy" means (1) a life insurance policy or a disability income insurance policy delivered in this state, or (2) a certificate of life insurance benefits or disability income insurance benefits, issued under a group life or disability income insurance policy and delivered in this state by a life or disability income insurer or a fraternal benefits society, regardless of the location of the group master policy.

(e) "Test of a person's genetic characteristics" means a laboratory test which is generally accepted in the scientific and medical communities for the determination of the presence or absence of genetic characteristics.

10148. No insurer shall require a test for the presence of a genetic characteristic for the purpose of determining insurability other than in accordance with the informed consent, and privacy protection provisions of this article and Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1. Notwithstanding any other provision of law, this constitutes the exclusive requirements for informed consent, and privacy protection for that testing.

(a) An insurer that requests an applicant to take a genetic characteristic test shall obtain the applicant's written informed consent for the test. Written informed consent shall include a description of the test to be performed, including its purpose, potential uses, and limitations, the meaning of its results, procedures for notifying the applicant of the results, and the right to confidential treatment of the results.

(b) The insurer shall notify an applicant of a test result by notifying the applicant or the applicant's designated physician. If the applicant tested has not given written consent authorizing a physician to receive the test results, the applicant shall be urged, at the time the applicant is informed of the test results, to contact a health care professional.

(c) The commissioner shall develop and adopt standardized language for the informed consent disclosure form required by this section to be given to any applicant for life or disability income insurance who takes a test for a genetic characteristic.

(d) A life or disability income insurer shall not require a person to undergo a test of the person's genetic characteristics unless the cost of the test is paid by the insurer.

(e) No policy shall limit benefits otherwise payable if loss is caused or contributed to by the presence or absence of genetic characteristics, except to the extent and in the same fashion as the

insurer limits coverage for loss caused or contributed to by other medical conditions presenting an increased degree of risk.

(f) Nothing in this chapter shall limit an insurer's right to decline an application or enrollment request for a life or disability income insurance policy, charge a higher rate or premium for such a policy, or place a limitation on coverage under such a policy, on the basis of manifestations of any disease or disorder.

(g) No discrimination shall be made in the fees or commissions of agents or brokers writing or renewing a life or disability income policy on the basis of a test of that person's genetic characteristics.

10149. (a) All underwriting activities undertaken by insurers pursuant to this article shall be subject to all applicable provisions of Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1.

(b) No life or disability income insurer shall require a genetic characteristic test if the results of the test would be used exclusively or nonexclusively for the purpose of determining eligibility for hospital, medical, or surgical insurance coverage or eligibility for coverage under a nonprofit hospital service plan or health care service plan.

10149.1. (a) This section shall apply to the disclosure of the results of a test for a genetic characteristic requested by an insurer pursuant to this article.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party, in a manner which identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in this article or in Sections 1603.1 and 1603.3 of the Health and Safety Code, shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party, in a manner which identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in this article or in Sections 1603.1 and 1603.3 of the Health and Safety Code, shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and no more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party, in a manner which identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in this article or in Sections 1603.1 and 1603.3 of the Health and Safety Code, which results in economic, bodily, or emotional harm to the

subject of the test, is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine of not to exceed ten thousand dollars ($10,000), or by both that fine and imprisonment.

(e) Any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or emotional harm which is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's "written authorization," as used in this section, applies only to the disclosure of test results by a person responsible for the care and treatment of the person subject to the test. Written authorization is required for each separate disclosure of the test results, and shall include to whom the disclosure would be made.

SEC. 8. Section 11512.95 of the Insurance Code is amended to read:

11512.95. (a) No nonprofit hospital service plan shall refuse to enroll any person or accept any person as a subscriber after appropriate application on the basis of a person's genetic characteristics which may, under some circumstances, be associated with disability in that person or that person's offspring. No plan shall require a higher rate or charge on the basis of a person's genetic characteristics than is at that time required of any other individual in an otherwise identical classification, nor shall any plan make or require any rebate, discrimination, or discount upon the amount to be paid or the service to be rendered under the plan because the person carries those traits.

(b) No discrimination shall be made in the fees or commissions of a solicitor or solicitor firm for an enrollment or a subscription or the renewal of an enrollment of subscription of any person on the basis of a person's genetic characteristics which may, under some circumstances, be associated with disability in that person or that person's offspring.

(c) "Genetic characteristics" as used in this section shall have the same meaning as defined in Section 10147.

(d) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 9. Section 11512.95 is added to the Insurance Code, to read:

11512.95. (a) No nonprofit hospital service plan shall refuse to enroll any person or accept any person as a subscriber after appropriate application by reason of the fact that the person carries a gene which may, under some circumstances, be associated with disability in that person's offspring, but which causes no adverse effects on the carrier. Such genes shall include, but are not limited to, Tay-Sachs trait, sickle cell trait, thalassemia trait, and X-linked hemophilia A. No plan shall require a higher rate or charge by reason

of the fact that the person carries such traits than is at that time required of any other individual in an otherwise identical classification, nor shall any plan make or require any rebate, discrimination, or discount upon the amount to be paid or the service to be rendered under the plan because the person carries such traits.

(b) No discrimination shall be made in the fees or commissions of a solicitor or solicitor firm for an enrollment or a subscription or the renewal of an enrollment or subscription of any person by reason of the fact that the person carries a gene which may, under some circumstances, be associated with disability in that person's offspring, but which causes no adverse effects on the carrier. Such genes shall include, but are not limited to, Tay-Sachs trait, sickle cell trait, thalassemia trait, and X-linked hemophilia A.

(c) This section shall become operative on January 1, 2002.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 762

An act to amend Sections 20603.2, 21252.01, 21252.02, and 21252.6 of, and to repeal and add Section 19827 of, the Government Code, and to amend Section 4800 of, and to add Section 4800.5 to, the Labor Code, relating to public employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1994. Filed with Secretary of State September 23, 1994.]

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

SECTION 1. Section 19827 of the Government Code is repealed.

SEC. 2. Section 19827 is added to the Government Code, to read:

19827. (a) In order for the state to recruit and retain the highest qualified employees for the California Highway Patrol, it is the policy of the state to compensate state traffic officers the estimated average total compensation as of July 1 of the year in which comparisons are made for the rank corresponding to state traffic officer within the Los Angeles Police Department, Los Angeles County Sheriff's Office, San Diego Police Department, Oakland Police Department, and the

San Francisco Police Department. Total compensation includes, but is not limited to, salary, retirement, health and dental insurance, educational incentives, longevity pay, night shift differential, and other skill or incentive pay.

Any increase in total compensation resulting from this subdivision shall be implemented through a memorandum of understanding negotiated pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1).

If the provisions of this subdivision are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(b) When determining compensation for state excluded sworn classifications of the California Highway Patrol, it is the policy of the state to consider total compensation for corresponding ranks within jurisdictions specified in subdivision (a), as well as other factors, including internal comparisons.

SEC. 3. Section 20603.2 of the Government Code is amended to read:

20603.2. (a) Notwithstanding Section 20603.01, the normal rate of contribution for patrol members for service rendered on and after January 1, 1984, shall be 8 percent of the compensation in excess of eight hundred sixty-three dollars ($863) per month paid those members. The Legislature reserves the right to increase the rate of contribution of patrol members as it may find appropriate from time to time.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(c) The provisions of a memorandum of understanding pertaining to subdivision (a) may be applied to patrol members who either are excluded from the definition of state employee in subdivision (c) of Section 3513, or are nonelected officers of employees of the executive branch of government and are not members of the civil service, provided the Department of Personnel Administration has approved this inclusion and has notified the board.

SEC. 4. Section 21252.01 of the Government Code is amended to read:

21252.01. The current service pension for patrol members and the combined current and prior service pensions for local safety members with respect to local safety service rendered to a contracting agency which is subject to the provisions of this section

is a pension derived from the contributions of the employer sufficient when added to the service retirement annuity which is derived from the accumulated normal contributions of the patrol member at the date of his or her retirement to equal the fraction of one-fiftieth of his or her final compensation set forth opposite his or her age at retirement taken to the preceding completed quarter-year, in the following table, multiplied by the number of years of Highway Patrol service and local safety service subject to this section with which he or she is credited at retirement.

Age at retirement	Fraction
50	1.0000
50¼	1.0175
50½	1.0350
50¾	1.0525
51	1.0700
51¼	1.0875
51½	1.1050
51¾	1.1225
52	1.1400
52¼	1.1575
52½	1.1750
52¾	1.1925
53	1.2100
53¼	1.2275
53½	1.2450
53¾	1.2625
54	1.2800
54¼	1.2975
54½	1.3150
54¾	1.3325
55 and over	1.3500

In no event shall the current service pension and the combined current and prior service pensions under this section for all service to all employers exceed an amount which, when added to the service retirement annuity related to that service, equals 75 percent of final compensation. For state members who retire on or after January 1, 1995, and with respect to service for all state employers under this section, the benefit shall not exceed 80 percent of final compensation. If the pension relates to service to more than one employer and would otherwise exceed that maximum, the pension payable with respect to each employer shall be reduced in the same proportion as the allowance based on service to that employer bears to the total allowance computed as though there were no limit, so that the total of the pensions shall equal the maximum. Where a state member retiring on or after January 1, 1995, has service under this section with both state and local agency employers, the 80-percent

limit shall apply and the additional benefit shall be funded by increasing the member's pension payable with respect to the state employer.

This section shall not apply to any contracting agency, unless and until the agency elects to be subject to the provisions of this section by amendment to its contract made in the manner prescribed for approval of contracts or, in the case of contracts made after the date this section is operative, by express provision in the contract making the contracting agency subject to the provisions of this section.

This section shall supersede Section 21252.02, 21252.1, 21252.5, 21252.6, or 21252.61, whichever is then applicable, with respect to patrol and local safety members who retire after the date this section becomes applicable to their respective employers.

Notwithstanding Sections 21208 and 21209, this section shall not apply to warden or forestry members.

The Legislature reserves, with respect to any member subject to this section, the right to provide for the adjustment of industrial disability retirement allowances because of earnings of a retired person and modification of the conditions and qualifications required for retirement for disability as it may find appropriate because of the earlier ages of service retirement made possible by the benefits under this section.

SEC. 5. Section 21252.02 of the Government Code is amended to read:

21252.02. The combined current and prior service pensions for state peace officer/firefighter members subject to this section with respect to state peace officer/firefighter service and the combined current and prior service pensions for local safety members with respect to local safety service rendered to a contracting agency which is subject to this section is a pension derived from the contributions of the employer sufficient when added to the service retirement annuity which is derived from the accumulated normal contributions of the state peace officer/firefighter member at the date of his or her retirement to equal the fraction of one-fiftieth of his or her final compensation set forth opposite his or her age at retirement taken to the preceding completed quarter-year, in the following table, multiplied by the number of years of state peace officer/firefighter service subject to this section with which he or she is credited at retirement.

Age at Retirement	Fraction
50	1.0000
50¼	1.0125
50½	1.0250
50¾	1.0375
51	1.0500
51¼	1.0625
51½	1.0750

51¾	1.0875
52	1.1000
52¼	1.1125
52½	1.1250
52¾	1.1375
53	1.1500
53¼	1.1625
53½	1.1750
53¾	1.1875
54	1.2000
54¼	1.2125
54½	1.2250
54¾	1.2375
55 and over	1.2500

In no event shall the current service pension and the combined current and prior service pensions under this section for all service to all employers exceed an amount which, when added to the service retirement annuity related to that service, equals 75 percent of final compensation. For state members who retire on or after January 1, 1995, and with respect to service for all state employers under this section, the benefit shall not exceed 80 percent of final compensation. If the pension relates to service to more than one employer, or this section and Section 21252.6, and would otherwise exceed that maximum, the pension payable with respect to each section or employer shall be reduced in the same proportion as the allowance bears to the total allowance computed as though there were no limit, so that the total of the pensions shall equal the maximum. Where a state member retiring on or after January 1, 1995, has service under this section with both state and local agency employers, the 80-percent limit shall apply and the additional benefit shall be funded by increasing the member's pension payable with respect to the state employer.

The Legislature reserves, with respect to any member subject to this section, the right to provide for the adjustment of industrial disability retirement allowances because of earnings of a retired person and modification of the conditions and qualifications required for retirement for disability as it may find appropriate because of the earlier age of service retirement made possible by the benefits under this section.

This section may be applied to related supervisory classes or confidential positions for the respective bargaining units specified in this section.

This section shall be operative with respect to state peace officer/firefighter members in Corrections Bargaining Unit No. 6, Protective Services and Public Safety Bargaining Unit No. 7, or Firefighters Bargaining Unit No. 8, in accordance with a memorandum of understanding reached between the state and the exclusive bargaining agent in the respective unit pursuant to the

State Employer-Employee Relations Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1). This section also shall be operative with respect to the state peace officer/firefighter members employed by a California State University police department who are in Public Safety Unit No. 8 in accordance with a memorandum of understanding reached between the Board of Trustees of the California State University and the recognized employee organization pursuant to the Higher Education Employer-Employee Relations Act (Chapter 12 (commencing with Section 3560) of Division 4 of Title 1).

This section shall also be operative with respect to a "state peace officer/firefighter member" defined in subdivision (a) of Section 20017.985 if authorized by, and in accordance with, a memorandum of understanding reached between the Trustees of the California State University and the recognized employee organization pursuant to the Higher Education Employer-Employee Relations Act (Chapter 12 (commencing with Section 3560) of Division 4 of Title 1).

Nothing in this section or in any other provision of law affected by the bill amending this section in 1984 of the 1983–84 Regular Session of the Legislature or the bill amending this section in 1986 of the 1985–86 Regular Session shall be construed as authorizing any future negotiation with respect to whether or not any bargaining unit specified in this section whose memorandum of understanding was previously approved by the Legislature pursuant to law and this section, shall continue to remain within the state peace officer/firefighter membership category.

The operative date of this section with respect to members in each of the bargaining units specified in this section shall be as provided for in the memorandum of understanding.

This section shall not apply to a person whose effective date of retirement is prior to the operative date of this section with respect to the bargaining unit of the person.

This section shall be known as, and may be cited as the State Peace Officers' and Fire Fighters' Retirement Act.

The Legislature reserves the right to subsequently modify or amend this part in order to completely effectuate the intent and purposes of this section and the right to not provide any new comparable advantages if disadvantages to employees result from any modification or amendment.

This section shall not apply to a contracting agency nor its employees unless and until, first, it is agreed to in a written memorandum of understanding entered into by an employer and representatives of employees and, second, the contracting agency elects to be subject to it by amendment to its contract made in the manner prescribed for approval of contracts or in the case of a new contract, by express provision of the contract. The operative date of this section with respect to a local safety member shall be the effective date of the amendment to his or her employers contract

electing to be subject to this section.

SEC. 6. Section 21252.6 of the Government Code is amended to read:

21252.6. The combined prior and current service pension for a state safety member, and a local safety member with respect to service to a contracting agency subject to this section, upon retirement after attaining age 55, is a pension derived from contributions of an employer sufficient, when added to that portion of the service retirement annuity which is derived from the accumulated normal contributions of the member at the date of his retirement, to equal one-fiftieth of his or her final compensation multiplied by the number of years of state safety, police, fire, or county peace officer service which is credited to him or her as a state safety member or a local safety member subject to this section at retirement. Notwithstanding the preceding sentence, this section shall apply to the current and prior service pension for any other state safety member based on service to which it would have applied had the member, on July 1, 1971, been in employment described in Section 20017.77 or 20017.78 of this code.

Upon retirement for service prior to attaining age 55, the percentage of final compensation payable for each year of credited service which is subject to this section shall be the product of 2 percent multiplied by the factor set forth in the following table for his or her actual age at retirement:

If retirement occurs at age:	The percent for each year of credited service is:
50	0.713
50¼	0.725
50½	0.737
50¾	0.749
51	0.761
51¼	0.775
51½	0.788
51¾	0.801
52	0.814
52¼	0.828
52½	0.843
52¾	0.857
53	0.871
53¼	0.886
53½	0.902
53¾	0.917
54	0.933
54¼	0.950
54½	0.966
54¾	0.983

In no event shall the total pension for all service under this section exceed an amount which, when added to the service retirement annuity related to that service, equals 75 percent of final compensation. For state members who retire on or after January 1, 1995, and with respect to service for all state employers under this section, the benefit shall not exceed 80 percent of final compensation. If the pension relates to service to more than one employer and would otherwise exceed that maximum, the pension payable with respect to each employer shall be reduced in the same proportion as the allowance based on service to that employer bears to the total allowance computed as though there were no limit, so that the total of such pensions shall equal the maximum. Where a state member retiring on or after January 1, 1995, has service under this section with both state and local agency employers, the 80-percent limit shall apply and the additional benefit shall be funded by increasing the member's pension payable with respect to the state employer.

This section shall not apply to a person whose effective date of retirement is prior to the operative date of this section.

The Legislature reserves, with respect to any member subject to this section, the right to provide for the adjustment of industrial disability retirement allowances because of earnings of a retired person and modification of the conditions and qualifications required for retirement for disability as it may find appropriate because of the earlier age of service retirement made possible by the benefits under this section.

The percentage of final compensation provided in this section shall be reduced by one-third as applied to that part of the member's final compensation which does not exceed four hundred dollars ($400) per month for service after the effective date of coverage of a member under the federal system. This paragraph shall not apply to a member who retires after the date upon which coverage under the federal system of persons in his employment terminates. It shall not apply to a local safety member employed by a contracting agency electing to be subject to this section after the effective date of the amendments to this section at the 1972 Regular Session unless the agency elects to be subject to this paragraph by amendment to its contract or by appropriate provision of a contract entered into after this provision is effective and as to any member, the reduction in the percentage of final compensation shall apply to all local safety service to the agency, if any of the local safety service has been included in the federal system.

This section shall not apply to a contracting agency nor its employees unless and until the agency elects to be subject to it by amendment to its contract made in the manner prescribed for approval of contracts or in the case of a new contract, by express provision of the contract. The operative date of this section with respect to a local safety member shall be the effective date of the amendment to his employer's contract electing to be subject to this

section.

The amendments to this section at the 1977–78 Regular Session of the Legislature shall be operative from January 1, 1977.

SEC. 7. Section 4800 of the Labor Code is amended to read:

4800. Whenever any member of the Department of Justice falling within the "state peace officer/firefighter" class is disabled by injury arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the Department of Justice to leave of absence while so disabled without loss of salary, in lieu of disability payments under this chapter, for a period of not exceeding one year. This section shall apply only to members of the Department of Justice whose principal duties consist of active law enforcement and shall not apply to persons employed in the Department of Justice whose principal duties are those of telephone operator, clerk, stenographer, machinist, mechanic or otherwise clearly not falling within the scope of active law enforcement service, even though this person is subject to occasional call or is occasionally called upon to perform duties within the scope of active law enforcement service.

This section shall apply to harbor policemen employed by the San Francisco Port Commission who are described in Section 20017.76 of the Government Code.

This section shall not apply to periods of disability which occur subsequent to termination of employment by resignation, retirement or dismissal. When this section does not apply, the employee shall be eligible for those benefits which would apply if this section had not been enacted.

SEC. 8. Section 4800.5 is added to the Labor Code, to read:

4800.5. (a) Whenever any sworn member of the California Highway Patrol is disabled by a single injury, excluding disabilities that are the result of cumulative trauma or cumulative injuries, arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the patrol, to leave of absence while so disabled without loss of salary, in lieu of disability payments under this chapter, for a period of not exceeding one year. This section shall apply only to members of the California Highway Patrol whose principal duties consist of active law enforcement and shall not apply to persons employed in the Department of the California Highway Patrol whose principal duties are those of telephone operator, clerk, stenographer, machinist, mechanic, or otherwise clearly not falling within the scope of active law enforcement service, even though this person is subject to occasional call or is occasionally called upon to perform the duties of active law enforcement service.

(b) Benefits payable for eligible sworn members of the California Highway Patrol whose disability is solely the result of cumulative trauma or injury shall be limited to the period of temporary disability or entitlement to maintenance allowance.

(c) This section shall not apply to periods of disability that occur

subsequent to termination of employment by resignation, retirement, or dismissal. When this section does not apply, the employee shall be eligible for those benefits that would apply had this section not been enacted.

(d) The appeals board may determine, upon request of any party, whether or not the disability referred to in this section arose out of an in the course of duty. In any action in which a dispute exists regarding the nature of the injury or the period of temporary disability or entitlement to maintenance allowance, or both, and upon the request of any party thereto, the appeals board shall determine when the disability commenced and ceased, and the amount of benefits provided by this division to which the employee is entitled during the period of this disability. The appeals board shall have the jurisdiction to award and enforce payment of these benefits, subject to subdivision (a) or (b), pursuant to Part 4 (commencing with Section 5300). A decision issued by the appeals board under this section is final and binding upon the parties subject to the rights of appeal contained in Chapter 7 (commencing with Section 5900) of Part 4.

(e) This section shall apply for periods of disability commencing on or after January 1, 1995.

SEC. 9. (a) Notwithstanding Section 3517.6 of the Government Code, the provisions of any addendum to any memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the addendum to the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.

(b) This is an addendum to the memorandum of understanding approved by the Legislature in Chapter 103 of the Statutes of 1992. The provisions of the addendum to the existing memorandum of understanding have been prepared pursuant to Section 3517.5 of the Government Code. The addendum was entered into by the state employer and the California Association of Highway Patrolmen on August 9, 1994. The addendum requires the expenditure of funds, and is hereby approved in accordance with Section 3517.6 of the Government Code.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for this act to be applicable as soon as possible in the 1994–95 fiscal year and so facilitate the orderly administration of state government at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 763

An act to amend Section 4516.6 of the Public Resources Code, relating to forest practices.

[Approved by Governor September 22, 1994. Filed with Secretary of State September 23, 1994.]

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

SECTION 1. Section 4516.6 of the Public Resources Code is amended to read:

4516.6. (a) To provide for adequate public review and comment, notwithstanding Section 4582.7, the director shall not approve a timber harvesting plan in any county for which rules and regulations have been adopted pursuant to Section 4516.5 or 4516.8 until 35 days from the date of filing of the plan, and timber operations shall not commence until five days from the date of approval of the plan. The board may provide, by regulation, for those periods to be waived or shortened by the department upon a determination, pursuant to criteria and procedures established by the board, that the proposed timber operations will cause no significant environmental damage or threat to public health and safety or to the environment, or that the timber operations are necessary to reduce such a threat. If the chairperson of the board of supervisors of the county in which the proposed timber operations are located notifies the director and the plan submitter that the county intends to appeal the approval of the plan and that the county meets the requirements for filing an appeal, no timber operations shall occur until the final determination of the appeal. If the board of supervisors determines not to appeal the approval of the plan, it shall immediately notify the director and the plan submitter in writing of that determination, and timber operations pursuant to the plan may commence immediately.

(b) (1) The board of supervisors of the county for which rules and regulations have been adopted pursuant to Section 4516.5 or 4516.8 may, not later than 10 days after approval of the plan by the director, appeal that approval to the board, if the county has both participated in the initial inspection of the plan area with the director and participated in a multidisciplinary review of the plan.

(2) The board may establish procedures for filing the appeal and may specify findings which the board of supervisors is required to make in filing the appeal to demonstrate that a substantial issue is raised with respect to public health and safety or the environment.

(c) The board shall grant to a county that meets the requirements for filing an appeal an initial hearing to consider the county's request for an appeal at the next regularly scheduled board meeting following the receipt of the request.

(d) The board shall grant a a public hearing on the appeal if it determines at an initial hearing pursuant to subdivision (c) that the

appeal raises substantial issues with respect to public health and safety or the environment.

(e) (1) The board shall hold a public hearing on the appeal granted pursuant to subdivision ((d) within 30 days from the date of granting the hearing or at the next regularly scheduled board meeting, whichever occurs first, or within a longer period of time that is mutually agreed upon by the board, the county, and the plan submitter. Upon conclusion of the hearing, the board shall approve or deny the plan. The basis of the board's decision shall be conformance with this section and the rules and regulations of the board, including any rules or regulations enacted with respect to the county pursuant to Section 4516.5 or 4516.8, and this chapter. In denying a plan, the board may make findings that set forth conditions under which it believes that the plan would have been approved.

(2) The board may delegate conduct of the hearing and the decision to a committee of three members to be appointed for that hearing by the chairperson of the board. The committee shall consist of at least two general public members of the board. The chairperson of the board or the chairperson's designee shall conduct the hearing. The decision of the committee shall have the full force and effect of a decision of the full board.

(f) This section does not apply to timber operations on any land area of less than three acres and which is not zoned for timberland production.

CHAPTER 764

An act to authorize the creation of the Antelope Valley Storm Water Conservation and Flood Control District, relating to water.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. This act shall be known and may be cited as the Antelope Valley Storm Water Conservation and Flood Control District Act. It is intended to supplement the Water Code and read as follows:

ANTELOPE VALLEY STORM WATER CONSERVATION AND FLOOD CONTROL DISTRICT

PART 1. CREATION AND POWER

CHAPTER 1. SHORT TITLE

1. This act shall be known and may be cited as the Antelope Valley Storm Water Conservation and Flood Control District Act.

CHAPTER 2. CREATION AND BOUNDARIES

10. (a) The Antelope Valley Storm Water Conservation and Flood Control District is hereby created, subject to the approval of the registered voters as provided in Section 20.

(b) As used in this act, "district" means the Antelope Valley Storm Water Conservation and Flood Control District.

(c) For the purposes of this act, the boundaries of the district are as described in Section 11.

11. For the purposes of this act, the boundaries of the district include that portion of the County of Los Angeles and the County of Kern, which is described as follows:

All that portion of the County of Kern, State of California, being a parcel of land described as follows:

Beginning at the southeast corner of fractional Section 31, Township 9 North, Range 18 West, SBM, said point on the southwest boundary of the County of Kern and the southerly boundary of Rancho Los Alamos Y Agua Caliente;

Thence through said rancho in a northeasterly direction, in a direct line to the southwesterly corner of fractional Section 21, Township 9 North, Range 18 West, SBM, said point also being a point on the easterly boundary of said rancho;

Thence easterly along the section lines to the southeast corner of fractional Section 22 of last said township, said point also being a point on the northwesterly boundary of Rancho La Liebre;

Thence northeasterly along said northeasterly boundary line to the southwesterly corner of fractional Section 23, of last said township;

Thence northerly along the section line to the southeast corner of last said township;

Thence easterly along the section line to the southeast corner of said Section 14;

Thence northerly along two section lines to the northwest corner of Section 12, of last said township;

Thence easterly along two section lines to the southwest corner of Section 5, Township 9 North, Range 17 West, SBM;

Thence northerly along the section line to the northwest corner of said Section 5;

Thence easterly along section lines to the southeast corner of fractional Section 34, Township 10 North, Range 17 West, SBM;

Thence northerly along section lines to the northwest corner of Section 24 of last said township;

Thence easterly along two section lines to the southeast corner of Section 24 of last said township;

Thence northerly along the section line to the northwest corner of

Section 30, Township 10 North, Range 16 West, SBM;

Thence easterly along two section lines to the southeast corner of Section 20 of last said township;

Thence northerly along the section line to the northeast corner of said Section 20;

Thence westerly along the section line to the northwest corner of said Section 20;

Thence northerly along two section lines to the northwest corner of Section 8, of last said township;

Thence easterly along two section lines to the southwest corner of Section 3 of last said township;

Thence northerly along the section line to the northwest corner of said Section 3;

Thence easterly along four section lines to the southwest corner of Section 32, Township 11 North, Range 15 West, SBM;

Thence northerly along four section lines to the northwest corner of Section 17, of last said township;

Thence easterly along six section lines to the southwest corner of Section 8, Township 11 North, Range 14 West, SBM;

Thence northerly along the section line to the northwest corner of said Section 8;

Thence easterly along the section line to the southwest corner of Section 4 of last said township;

Thence northerly along the section line to the northwest corner of said Section 4;

Thence easterly along five section lines to the southwest corner of Section 32, Township 12 North, Range 13 West, SBM;

Thence northerly along the section line to the northwest corner of said Section 32;

Thence easterly along two section lines to the southwest corner of Section 32, of Township 32 South, Range 35 East, MDM;

Thence northerly along the section line to the northwest corner of said Section 32;

Thence easterly along two section lines to the southwest corner of Section 27, of last said township;

Thence northerly along the section line to the west quarter corner of said Section 27;

Thence easterly along two midsection lines, a distance of two miles, more or less, to the east quarter corner of Section 26, of last said township;

Thence southerly along the section line to the northwest corner of Section 36, of last said township;

Thence easterly along the section line to the northeast corner of said Section 36;

Thence southerly along the section line to the southeast corner of said Section 36;

Thence easterly along the section line to the north quarter corner of Section 34, Township 12 North, Range 12 West, SBM;

Thence southerly along the north-south midsection line to the

north quarter corner of Section 3, Township 11 North, Range 12 West, SBM;

Thence easterly along section lines to the northeast corner of Section 2 of last said township;

Thence southerly along the section line to the west quarter corner of Section 1 of last said township;

Thence easterly along the east-west midsection line to the east quarter corner of said Section 1;

Thence southerly along section lines to the northwest corner of Section 18, Township 11 North, Range 11 West, SBM;

Thence easterly along two section lines on the northeast corner of Section 17 of last said township;

Thence southerly along the section line, to the northwest corner of Section 21;

Thence easterly along five section lines, to the southwest corner of Section 17, Township 11 North, Range 10 West;

Thence northerly along the section line, to the northwest corner of Section 17;

Thence easterly along two section lines, to the southwest corner of Section 10;

Thence northerly along the section line, to the northwest corner of Section 10;

Thence easterly along the section line, to the southwest corner of Section 2;

Thence northerly along two section lines, to the northwest corner of Section 35, Township 12 North, Range 10 West;

Thence easterly along the section lines, to the southwest corner of Section 35, Township 32 South, Range 38 East;

Thence northerly along the section line, to the northwest corner of Section 35;

Thence easterly along two section lines, to the southwest corner of Section 30, Township 32 South, Range 39 East;

Thence northerly along the section line, to the northwest corner of Section 30;

Thence easterly along two section lines, to the southwest corner of Section 21;

Thence northerly along the section line, to the northwest corner of Section 21;

Thence easterly along the section line, to the southwest corner of Section 15;

Thence northerly along two section lines, to the northwest corner of Section 10;

Thence easterly along the section line, to the southwest corner of Section 2;

Thence northerly along three section lines, to the northwest corner of Section 26, Township 31 South, Range 39 East;

Thence easterly along the section line, to the southwest corner of Section 24;

Thence northerly along three section lines, to the northwest

corner of Section 12, Township 31 South, Range 39 East;

Thence easterly along the section line, to the southwest corner of Section 6, Township 31 South, Range 40 East;

Thence northerly along two section lines, to the northwest corner of Section 31, Township 30 South, Range 40 East;

Thence easterly along the section line, to the southwest corner of Section 29 of last said township;

Thence northerly along the section line, to the west quarter corner of said Section 29;

Thence easterly along the three east-west midsection lines, to the east quarter corner of Section 27 of last said township;

Thence southerly along the section line, to the northwest corner of Section 35 of last said township;

Thence easterly along the section line, to the northeast corner of said Section 35;

Thence southerly along the section line, to the northwest corner of Section 1, Township 31 South, Range 40 East;

Thence easterly along the section line, to the northeast corner of said Section 1, the corner also being a point on the east boundary of Kern County;

Thence southerly along 31 section lines and the east boundary of Kern County, to the southeast corner of Section 32, Township 9 North, Range 7 West; the corner also being the most southeast corner of Kern County;

Thence westerly on the south boundary line of the County of Kern to the northeast corner of Section 1, Township 8 North, Range 8 West, the northeast corner also being the northeast corner of the County of Los Angeles;

Thence commencing in those portions of the County of Los Angeles, southerly along the east boundary line of the County of Los Angeles, and following the same line in its various courses to the point of intersection with the south line of Section 31, Township 4 North, Range 7 West;

Thence westerly along the township line to the northeast corner of Section 1, Township 3 North, Range 9 West;

Thence southerly and westerly along the east and south lines of the north half of last said Section 1 to the southwest corner thereof;

Thence southerly along the section lines to the southeast corner of the north half of Section 11, Township 3 North, Range 9 West;

Thence easterly along the center section lines to the northeast corner of the south half of Section 8 of last said township;

Thence southerly and westerly along the east and south lines of Section 8 and continuing westerly along the section lines to the northeast corner of Section 15, Township 3 North, Range 10 West;

Thence southerly and westerly along the east and south lines of the north half of last said Section 15 and continuing westerly along the center section lines to the southwest corner of the north half of Section 14, Township 3 North, Range 11 West;

Thence northerly along the section lines to the southeast corner of

Section 3, Township 3 North, Range 11 West;

Thence westerly and northerly along the south and west lines of said Section 3, and continuing northerly along the section line to the southeast corner of the north half of Section 33, Township 4 North, Range 11 West;

Thence westerly and northerly along the south and west lines of last said north half of Section 33 to the southeast corner of Section 29, Township 4 North, Range 11 West;

Thence westerly and northerly along the south and west lines of the southeast quarter of last said Section 29 to the southeast corner of the northwest quarter of the section;

Thence westerly and northerly along the south and west lines of the northwest quarter and continuing northerly along the section lines to the southeast corner of the northeast quarter of Section 19, Township 4 North, Range 11 West;

Thence westerly, northerly, and easterly along the south, west, and north lines of last said northeast quarter to the northeast corner thereof;

Thence northerly along the section lines to the southeast corner of the north half of Section 6, Township 4 North, Range 11 West;

Thence westerly and northerly along the south and west lines of last said north half of Section 6, and continuing northerly along the range line to the southeast corner of the north half of Section 24, Township 5 North, Range 12 West;

Thence westerly along the center section lines to the southwest corner of the north half of Section 23, Township 5 North, Range 12 West;

Thence northerly along the section lines to the southeast corner of the north half of Section 15, Township 5 North, Range 12 West;

Thence westerly and northerly along the south and west lines of last said north half of Section 15, and continuing northerly along the section lines to the southeast corner of the north half of Section 9, Township 5 North, Range 12 West;

Thence westerly along the center section line to the southeast corner of the north half of Section 8, Township 5 North, Range 12 West;

Thence southerly and westerly along the east and south lines of last said Section 8, and continuing westerly along the section line to the southwest corner of the southeast quarter of Section 7, Township 5 North, Range 12 West;

Thence northerly along the center section line to the southeast corner of the northwest quarter of last said Section 7;

Thence westerly and northerly along the south and west lines of last said northwest quarter to the southeast corner of Section 1, Township 5 North, Range 13 West;

Thence westerly and northerly along the south and west lines of last said Section 1 to the southeast corner of the north half of Section 2, Township 5 North, Range 13 West;

Thence westerly along the center section lines to the center of

Section 4, Township 5 North, Range 13 West;

Thence northerly along the center section line to the point of intersection with the south line of Section 34, Township 6 North, Range 13 West;

Thence westerly and northerly along the south and west lines of last said Section 34 to the southeast corner of the north half of Section 33, Township 6 North, Range 13 West;

Thence westerly along the center section lines to the southwest corner of the north half of Section 31, Township 6 North, Range 13 West;

Thence northerly along the section lines to the southeast corner of the north half of Section 24, Township 6 North, Range 14 West;

Thence westerly along the center section lines to the southwest corner of the north half of Section 23, Township 6 North, Range 14 West;

Thence northerly along the section line to the southeast corner of Section 15, Township 6 North, Range 14 West;

Thence westerly and northerly along the south and west lines of the east half of last Section 15 to the northwest corner thereof;

Thence westerly along the section lines to the southwest corner of the east half of Section 9, Township 6 North, Range 14 West;

Thence northerly along the center section line to the northwest corner of last said east half of Section 9, being a point on the south line of Section 4 of last said township;

Thence westerly and northerly along the south and west lines of Section 4, Township 6 North, Range 14 West, and continuing northerly along the section lines to the northwest corner of Section 33, Township 6 North, Range 14 West;

Thence easterly along the section line to the southeast corner of Section 28, Township 7 North, Range 14 West;

Thence northerly along the section line to the southeast corner of the north half of last said Section 28;

Thence westerly along the center section lines to the center of Section 29, Township 7 North, Range 14 West;

Thence northerly along the center section line to the northwest corner of the northeast quarter of last said Section 29;

Thence westerly along the section lines to the southwest corner of Section 19, Township 7 North, Range 14 West;

Thence northerly along the section line to the southeast corner of the north half of Section 24, Township 7 North, Range 15 West;

Thence westerly along the center section lines to the southwest corner of the north half of Section 23, Township 7 North, Range 15 West;

Thence northerly along the section line to the southeast corner of Section 15, Township 7 North, Range 15 West;

Thence westerly and northerly along the south and west lines of last said Section 15 to the southeast corner of the north half of Section 16, Township 7 North, Range 15 West;

Thence westerly and northerly along the south and west lines of

the north half of Section 16 to the southeast corner of Section 8, Township 7 North, Range 15 West;

Thence westerly along the section lines to the southeast corner of Section 12, Township 7 North, Range 16 West;

Thence northerly along the section line to the southeast corner of the north half of last said Section 12;

Thence westerly along the center section line to the center of last said Section 12;

Thence southerly and westerly along the east and south lines of the southwest quarter of last said Section 12 to the northeast corner of Section 14, Township 7 North, Range 16 West;

Thence southerly and westerly along the east and south lines of the northeast quarter of last said Section 14 to the center thereof;

Thence southerly and westerly along the east and south lines of the southwest quarter of last said Section 14 and continuing westerly along the section line to the southwest corner of the east half of Section 15, Township 7 North, Range 16 West;

Thence northerly along the center section line to the center of last said Section 15;

Thence westerly and northerly along the south and west lines of the northwest quarter of last said Section 15 to the southeast corner of Section 9, Township 7 North, Range 16 West;

Thence westerly and northerly along the south and west lines of last said Section 9 to the southeast corner of the north half of Section 8, Township 7 North, Range 16 West;

Thence westerly along the center section line to the center of last said Section 8;

Thence southerly and westerly along the east and south lines of the southwest quarter of last said Section 8, and continuing westerly along the section lines to the southwest corner of the east half of Section 7, Township 7 North, Range 16 West;

Thence northerly along the center section line to the center of last said Section 7;

Thence westerly along the center section line to the southwest corner of the north half of last said Section 7;

Thence northerly along the range line to the southeast corner of the north half of Section 12, Township 7 North, Range 17 West;

Thence westerly along the center section lines to the southwest corner of the north half of Section 11, Township 7 North, Range 17 West;

Thence northerly along the section line to the southeast corner of fractional Section 3, Township 7 North, Range 17 West;

Thence westerly and northerly along the south and west lines of last said fractional Section 3 to the southeast corner of Section 33, Township 8 North, Range 17 West;

Thence westerly and northerly along the south and west lines of last said Section 33 to the southeast corner of the north half of Section 32;

Thence westerly and northerly along the south and west lines of

last said north half of Section 32 to the northwest corner thereof;

Thence westerly along section lines to the southwest corner of the east half of Section 25, Township 8 North, Range 18 West;

Thence northerly along the center section line to the center of last said Section 25;

Thence westerly along the center section lines to the center of Section 26, Township 8 North, Range 18 West;

Thence northerly along the center section lines to the center of Section 14, Township 8 North, Range 18 West;

Thence westerly along the center section lines to the center of Section 15, Township 8 North, Range 18 West;

Thence northerly along the center section line to the northwest corner of the east half of the last said Section 15;

Thence westerly along section lines to the southwest corner of Section 9, Township 8 North, Range 18 West;

Thence northerly along the section line to the southeast corner of Section 5, Township 8 North, Range 18 West;

Thence westerly and northerly along the south and west lines of last said Section 5 to the northwest corner thereof, being a point on the northerly boundary of the County of Los Angeles;

Thence easterly along said northerly boundary of the County of Los Angeles to the southwest corner of Section 35, Township 9 North, Range 18 West, and the point of beginning.

12. There are seven divisions in the district. The boundaries of the divisions are as follows:

(a) Division 1 Boundary (Lancaster Central)

Beginning at the northwest corner of the northeast quarter of Section 9, Township 7 North, Range 12 West, San Bernardino Base and Meridian;

Thence easterly along three and one-half sections to the northeast corner of Section 12, Township 7 North, Range 12 West;

Thence southerly along the east section line of said Section 12 to the southeast corner thereof;

Thence westerly along the south section line of said Section 12 to the northeast corner of the northwest quarter of Section 13, of last said township;

Thence southerly along the quarter section line of said Section 13 to the southeast corner of the southwest quarter of said Section 13;

Thence westerly along the south line of Section 13, continuing west to the southwest corner of Section 14, of last said township;

Thence southerly along the east line of Section 22, of last said township, to a point of intersection with the center line of the Southern Pacific Railroad right-of-way;

Thence southeasterly along the last mentioned railroad center line to a point of intersection with the south line of Section 35, of last said township;

Thence westerly along said south line of Section 35 to the southwest corner of the southeast quarter of Section 33, of last said township;

Thence northerly along the quarter section line of the last mentioned Section 33, continuing north through five sections to the northwest corner of the northeast quarter of Section 9, of last said township and the point of beginning.

(b) Division 2 Boundary (Kern County Portion)

Beginning at the southwest corner of fractional Section 21, Township 9 North, Range 18 West, SBM, said point also being a point on the southerly boundary of the County of Kern and the southerly boundary of Rancho Los Alamos Y Agua Caliente;

Thence through said rancho in a northeasterly direction, in a direct line to the southwesterly corner of fractional Section 21, Township 9 North, Range 18 West, SBM, said point also being a point on the easterly boundary of said rancho;

Thence easterly along the section lines to the southeast corner of fractional Section 22 of last said township, said point also being a point on the northwesterly boundary of Rancho La Liebre;

Thence northeasterly along said northwesterly boundary line to the southwesterly corner of fractional Section 23, of last said township;

Thence northerly along the section line to the southwest corner of Section 14, of last said township;

Thence easterly along the section line to the southeast corner of said Section 14;

Thence northerly along two section lines to the northwest corner of Section 12, of last said township;

Thence easterly along two section lines to the southwest corner of Section 5, Township 9 North, Range 17 West, SBM;

Thence northerly along the section line to the northwest corner of said Section 5;

Thence easterly along section lines to the southeast corner of fractional Section 34, Township 10 North, Range 17 West, SBM;

Thence northerly along section lines to the northwest corner of Section 26 of last said township;

Thence easterly along two section lines to the southeast corner of Section 24 of last said township;

Thence northerly along the section line to the northwest corner of Section 30, Township 10 North, Range 16 West, SBM;

Thence easterly along two section lines to the southeast corner of Section 20 of last said township;

Thence northerly along the section line to the northeast corner of said Section 20;

Thence westerly along the section line to the northwest corner of said Section 20;

Thence northerly along two section lines to the northwest corner of Section 8, of last said township;

Thence easterly along two section lines to the southwest corner of Section 3 of last said township;

Thence northerly along the section line to the northwest corner of said Section 3;

Thence easterly along four section lines to the southwest corner of Section 32, Township 11 North, Range 15 West, SBM;

Thence northerly along four section lines to the northwest corner of Section 17, of last said township;

Thence easterly along six section lines to the southwest corner of Section 8, Township 11 North, Range 14 West, SBM;

Thence easterly along two section lines to the northeast corner of Section 17 of last said township;

Thence southerly along the section line, to the northwest corner of Section 21 of last said township;

Thence easterly along five section lines, to the southwest corner of Section 17, Township 11 North, Range 10 West;

Thence northerly along the section line, to the northwest corner of said Section 17;

Thence easterly along two section lines, to the southwest corner of Section 10 of last said township;

Thence northerly along the section line, to the northwest corner of Section 10 of last said township;

Thence easterly along the section line, to the southwest corner of Section 2 of last said township;

Thence northerly along two section lines, to the northwest corner of Section 35, Township 12 North, Range 10 West;

Thence easterly along the section line, to the southwest corner of Section 35, Township 32 South, Range 38 East;

Thence northerly along the section line, to the northwest corner of said Section 35;

Thence easterly along two section lines, to the southwest corner of Section 30, Township 32 South, Range 39 East;

Thence northerly along the section line, to the northwest corner of said Section 30;

Thence easterly along two section lines, to the southwest corner of Section 21 of last said township;

Thence northerly along the section line, to the northwest corner of said Section 21;

Thence easterly along the section line, to the southwest corner of Section 15 of last said township;

Thence northerly along two section lines, to the northwest corner of Section 10 of last said township;

Thence easterly along the section line, to the southwest corner of Section 2 of last said township;

Thence northerly along three section lines, to the northwest corner of Section 26, Township 31 South, Range 39 East;

Thence easterly along the section line, to the southwest corner of Section 24 of last said township;

Thence northerly along three section lines, to the northwest corner of Section 12, Township 31 South, Range 39 East;

Thence easterly along the section line, to the southwest corner of Section 6, Township 31 South, Range 40 East;

Thence northerly along two section lines, to the northwest corner

of Section 31, Township 30 South, Range 40 East;

Thence easterly along the section line, to the southwest corner of Section 29 of last said township;

Thence northerly along the section line, to the west quarter corner of said Section 29;

Thence easterly along three east-west midsection lines, to the east quarter corner of Section 27 of last said township;

Thence southerly along the section line, to the northwest corner of Section 35 of last said township;

Thence easterly along the section line, to the northeast corner of said Section 35;

Thence southerly along the section line, to the northwest corner of Section 1, Township 31 South, Range 40 East;

Thence easterly along the section line, to the northeast corner of said Section 1, said corner also being a point on the east boundary of Kern County;

Thence southerly along 31 section lines and the east boundary, to the southeast corner of Section 32, Township 9 North, Range 7 West; the corner also being the most southeast corner of Kern County;

Thence westerly on the south boundary line of the County of Kern to the northeast corner of Section 1, Township 8 North, Range 8 West, last said northeast corner also being the northeast corner of the County of Los Angeles;

Thence west continuing along the south boundary line of the County of Kern to the southwest corner of Section 35, Township 9 North, Range 18 West, and the point of beginning.

(c) Division 3 Boundary (Lancaster East)

Beginning at the intersection of the Southern Pacific Railroad right-of-way and the north line of Section 4, Township 8 North, Range 12 West, San Bernardino Base and Meridian, the line also being the north line of the County of Los Angeles;

Thence easterly along the north line to the northeast corner of Section 1, Township 8 North, Range 8 West;

Thence southerly along the east line of Section 1, continuing south to the southeast corner of Section 36, Township 7 North, Range 8 West;

Thence westerly along the south line of Section 36, continuing west to the southwest corner of Section 35, Township 7 North, Range 10 West;

Thence northerly along the west line of Section 35 to the southeast corner of Section 27, Township 7 North, Range 10 West;

Thence westerly along the south line of Section 27 to the northeast corner of Section 35, Township 7 North, Range 12 West;

Thence southerly along the east line of Section 35 to the southeast corner of said Section 35;

Thence westerly along the south line of said Section 35 to the intersection of the center line of the Southern Pacific Railroad;

Thence northwesterly along the last mentioned railroad center line to a point of intersection with the west line of said Section 26,

Township 7 North, Range 12 West;

Thence northerly along the west line of said Section 26 to the northwest corner of Section 23 of last said township;

Thence easterly along the north line of Section 23 to the southwest corner of the southeast quarter of Section 13, Township 7 North, Range 12 West;

Thence northerly along the quarter section line to the northwest corner of the northeast quarter of said Section 13;

Thence easterly along the north line of said Section 13 to the southwest corner of Section 7, Township 7 North, Range 11 West;

Thence northerly along the west line of said Section 7 to its northwest corner;

Thence westerly along the south line of Section 1, Township 7 North, Range 12 West, continuing west for more than two sections to the center line of the Southern Pacific Railroad;

Thence northwesterly along the last mentioned railroad center line to a point of intersection with the north line of Section 4, Township 8 North, Range 12 West and the point of beginning.

(d) Division 4 (Palmdale East)

Beginning at the northwest corner of Section 33, Township 7 North, Range 11 West, San Bernardino Base and Meridian;

Thence easterly along the north line of said Section 33, continuing easterly to the northeast corner of Section 34, Township 7 North, Range 10 West;

Thence southerly along the east line of said Section 34 to the northwest corner of Section 2, Township 6 North, Range 10 West;

Thence easterly along the north line of Section 2, continuing easterly for more than 14 sections to the northeast corner of Section 1, Township 6 North, Range 8 West, being a point on the easterly boundary of the County of Los Angeles;

Thence southerly along said easterly boundary of the County of Los Angeles, and following the same in its various courses to the point of intersection with the south line of Section 31, Township 4 North, Range 7 West;

Thence westerly along the township line to the northeast corner of Section 1, Township 3 North, Range 9 West;

Thence southerly and westerly along the east and south line of the north half of last said Section 1 to the southwest corner thereof;

Thence southerly along the section line to the southeast corner of the north half of Section 11, Township 3 North, Range 9 West;

Thence easterly along the center section lines to the northeast corner of the south half of Section 8 of last said township;

Thence southerly and westerly along the east and south lines of last said Section 8 and continuing westerly along the section line to the southwest corner of Section 8, Township 3 North, Range 10 West;

Thence northerly along the west line of Section 8, and continuing northerly along the section lines to the southerly line of Section 31, Township 4 North, Range 10 West;

Thence easterly and northerly along the south and east lines of last

said Section 31, continuing along lines, to the center line of Fort Tejon Road on the easterly line of Section 19, Township 5 North, Range 10 West;

Thence northwesterly and westerly along the center line of said road through its courses to the intersection of Avenue V, also being a point on the southerly line of Section 13, Township 5 North, Range 11 West;

Thence westerly and northerly along the south and west lines of last said Section 13 to the intersection with the center line of State Highway 138;

Thence westerly, northwesterly, and northerly along the center line of said state highway through its courses to the intersection of Avenue S and 47th Street East, also being a point of intersection on the south line of Section 33, Township 6 North, Range 11 West;

Thence westerly along the township line to the southwest corner of the southeast quarter of Section 31 of last said township;

Thence northerly along the quarter section line of said Section 31 to the northwest corner of the northeast quarter;

Thence easterly along the north line of said Section 31, continuing east along section lines to the southwest corner of Section 28 of last said township;

Thence northerly along the west line of Section 28, continuing northerly along six sections to the northwest corner of Section 33, Township 7 North, Range 11 West and the point of beginning.

(e) Division 5 (Palmdale Central)

Beginning at the northwest corner of Section 36, Township 7 North, Range 12 West, San Bernardino Base and Meridian;

Thence easterly along the north line of Section 36, continuing east along section lines to the northeast corner of Section 32, Township 7 North, Range 11 West;

Thence southerly along the east line of Section 32, continuing south for six sections to the southeast corner of Section 29, Township 6 North, Range 11 West;

Thence westerly along the south line of Section 29 to the northeast corner of the northwest quarter of Section 31, Township 6 North, Range 11 West;

Thence southerly along the quarter section line to the north line of Section 1, Township 5 North, Range 12 West;

Thence easterly along the north line to the intersection of the center line of 47th Street East, also known as State Highway 138;

Thence southerly, southeasterly, and easterly along the center line of said State Highway 138 through its courses to its intersection with the west line of Section 13, Township 5 North, Range 11 West;

Thence southerly and easterly along the west and south lines of last said Section 13 to the intersection of Fort Tejon Road;

Thence southeasterly and easterly along the center line of said road through its courses to its intersection with the east line of Section 19, Township 5 North, Range 10 West;

Thence southerly along the easterly line of said Section 19,

continuing southerly to the southerly corner of Section 31, Township 4 North, Range 10 West, being a point on the north line of Section 5, Township 3 North, Range 10 West;

Thence westerly and southerly along the north and west lines of said Section 5, continuing southerly along the section lines to the southwest corner of Section 8, Township 3 North, Range 10 West;

Thence easterly along the section lines to the northeast corner of Section 15, Township 3 North, Range 10 West;

Thence southerly and westerly along the east and south lines of the north half of last said Section 15 and continuing westerly along the center section lines to the southwest corner of the north half of Section 14, Township 3 North, Range 11 West;

Thence northerly along the section line to the southeast corner of Section 3, Township 3 North, Range 11 West;

Thence westerly and northerly along the south and west lines of last said Section 3, and continuing northerly along the section line to the southeast corner of the north half of Section 33, Township 4 North, Range 11 West;

Thence westerly and northerly along the south and west lines of last said north half of Section 33 to the southeast corner of Section 29, Township 4 North, Range 11 West;

Thence westerly and northerly along the south and west lines of the southeast quarter of last said Section 29 to the southeast corner of the northwest quarter of said section;

Thence westerly and northerly along the south and west lines of last said northwest quarter and continuing northerly along the section line to the southeast corner of the northeast quarter of Section 19, Township 4 North, Range 11 West;

Thence westerly, northerly, and easterly along the south, west, and north lines of last said northeast quarter to the northeast corner thereof;

Thence northerly along section lines to the southeast corner of the north half of Section 6, Township 4 North, Range 11 West;

Thence westerly and northerly along the south and west lines of last said north half of Section 6, and continuing northerly along the range line to the southeast corner of the north half of Section 24, Township 5 North, Range 12 West;

Thence westerly along the center section line to the center line of Angeles Forest Highway;

Thence northerly along said center line of Angeles Forest Highway to its north intersection with the center line of Sierra Highway;

Thence northeasterly and continuing northwesterly along the last mentioned center line of Sierra Highway through its courses to an intersection of the south line of Section 35, Township 6 North, Range 12 West;

Thence westerly along the last mentioned south line of Section 35, continuing west to the intersection of the center line of Tierra Subida Avenue;

Thence northerly along the last mentioned center line of Tierra Subida Avenue to the intersection of Palmdale Boulevard and 10th Street West, also being the northwest corner of Section 27, Township 6 North, Range 12 West;

Thence easterly along the north line of said Section 27, continuing easterly to the center line of the Southern Pacific Railroad right-of-way;

Thence northwesterly along said railroad center line to an intersection with the north line of Section 2, Township 6 North, Range 12 West;

Thence easterly along the last mentioned north line, continuing easterly to the southwest corner of Section 36, Township 7 North, Range 12 West;

Thence northerly along the westerly line of said Section 36 to its northwest corner and the point of beginning.

(f) Division 6 (Palmdale West)

Beginning at the northwest corner of Section 1, Township 6 North, Range 14 West, San Bernardino Base and Meridian;

Thence easterly along the north line of said Section 1, continuing easterly to the northeast corner of Section 3, Township 6 North, Range 13 West;

Thence southerly along the easterly line of said Section 3 to the northwest corner of the south half of Section 2, Township 6 North, Range 13 West;

Thence easterly along the northerly line of said south half of said Section 2 to the northeast corner of the west half of the southeast quarter of said Section 2, Township 6 North, Range 13 West;

Thence southerly along the easterly line of the said west half of the south half of said Section 2 to the south line of said Section 2;

Thence easterly along the south line of said Section 2, continuing easterly to the southeast corner of Section 6, Township 6 North, Range 12 West;

Thence northerly along the easterly line of said Section 6 to the northwest corner of Section 5, Township 6 North, Range 12 West;

Thence easterly along the northerly line of said Section 5, continuing easterly to the intersection of the center line of the Southern Pacific Railroad right-of-way;

Thence southeasterly along the last mentioned railroad center line to the intersection of the south line of Section 23, Township 6 North, Range 12 West;

Thence westerly along the last mentioned southerly line, continuing westerly to the southeast corner of Section 21, Township 6 North, Range 12 West, also known as the center line intersection of Palmdale Boulevard and Tierra Subida Avenue;

Thence southerly along the last mentioned center line of Tierra Subida Avenue to the intersection of the north line of Section 4, Township 5 North, Range 12 West;

Thence easterly along the last mentioned north line, continuing easterly to the intersection of the center line of Sierra Highway;

Thence southeasterly and continuing southwesterly along the last mentioned center line of Sierra Highway through its courses to the intersection of the center line of Angeles Forest Highway;

Thence southwesterly along the last mentioned center line of the Angeles Forest Highway to an intersection of the south line of the north half of Section 23, Township 5 North, Range 12 West;

Thence westerly along the center section line to the southwest corner of last said north half of Section 23;

Thence northerly along the section line to the southeast corner of the north half of Section 15, Township 5 North, Range 12 West;

Thence westerly and northerly along the south and west lines of last said north half of Section l5, and continuing northerly along the section line to the southeast corner of the north half of Section 9, Township 5 North, Range 12 West;

Thence westerly along center section lines to the southeast corner of the north half of Section 8, Township 5 North, Range 12 West;

Thence southerly and westerly along the east and south lines of last said Section 8, and continuing westerly along the section line to the southwest corner of the southeast quarter of Section 7, Township 5 North, Range 12 West;

Thence northerly along the center section line to the southeast corner of the northwest quarter of last said Section 7;

Thence westerly and northerly along the south and west lines of last said northwest quarter to the southeast corner of Section 1, Township 5 North, Range 13 West;

Thence westerly and northerly along the south and west lines of last said Section 1 to the southeast corner of the north half of Section 2, Township 5 North, Range 13 West;

Thence westerly along center section lines to the center of Section 4, Township 5 North, Range 13 West;

Thence northerly along the center section line to the point of intersection with the south line of Section 34, Township 6 North, Range 13 West;

Thence westerly and northerly along the south and west lines of last said Section 34 to the southeast corner of the north half of Section 33, Township 6 North, Range 13 West;

Thence westerly along center section lines to the southwest corner of the north half of Section 31, Township 6 North, Range 13 West;

Thence northerly along the section lines of the southeast corner of the north half of Section 24, Township 6 North, Range 14 West;

Thence westerly along center section lines to the southwest corner of the north half of Section 23, Township 6 North, Range 14 West;

Thence northerly along the section line to the southeast corner of Section 15, Township 6 North, Range 14 West;

Thence westerly and northerly along the south and west lines of the east half of last said Section 15 to the northwest corner thereof;

Thence westerly along the section lines to the southwest corner of the east half of Section 9, Township 6 North, Range 14 West;

Thence northerly along the center line to the northwest corner of

last said east half of Section 9, being a point on the south line of Section 4 of last said township;

Thence westerly and northerly along the south and west lines of said Section 4, Township 6 North, Range 14 West; to the northwest corner of said Section 4;

Thence easterly along the northerly line of said Section 4, continuing along the section lines to the northwest corner of Section 1, Township 6 North, Range 14 West, and the point of beginning.

(g) Division 7 (Lancaster West)

Beginning at the northerly boundary of the County of Los Angeles at the northwest corner of Section 5, Township 8 North, Range 18 West, San Bernardino Base and Meridian;

Thence easterly along the last mentioned northerly line, continuing easterly to the intersection of the center line of the Southern Pacific Railroad right-of-way;

Thence southeasterly along the last mentioned railroad center line to an intersection with the south line of Section 3, Township 7 North, Range 12 West;

Thence westerly along the last mentioned south line of Section 3 to the northeast corner of the northwest quarter of Section 9, Township 7 North, Range 12 West;

Thence southerly along the quarter section line of said Section 9, continuing southerly along four sections to the southeast corner of the southwest quarter of Section 33, Township 7 North, Range 12 West;

Thence westerly along the south line of said Section 33, continuing westerly along the section line to the northeast corner of Section 6, Township 6 North, Range 12 West;

Thence southerly along the easterly line of said Section 6 to its southeast corner;

Thence westerly along the south line of said Section 6, continuing westerly along the section lines to the intersection of the westerly line of the east half of the southeast quarter of Section 2, Township 6 North, Range 13 West;

Thence northerly along the last mentioned westerly line of said southeast quarter to the south line of the north half of said Section 2;

Thence westerly and northerly along the south and west lines of said north half to the northeast corner of Section 3, Township 6 North, Range 13 West;

Thence westerly along the north line of said Section 3 and continuing along the section lines to the northwest corner of Section 4, Township 6 North, Range 14 West, also being the southwest corner of Section 33, Township 7 North, Range 15 West;

Thence northerly along the west line of said Section 33 to its northwest corner;

Thence easterly along the section line to the southeast corner of Section 28, Township 7 North, Range 14 West;

Thence northerly along the section line to the southeast corner of

the north half of last said Section 28;

Thence westerly along the center section line to the center of Section 29, Township 7 North, Range 14 West;

Thence northerly along the center section line to the northwest corner of the northeast quarter of last said Section 29;

Thence westerly along the section line to the southwest corner of Section 19, Township 7 North, Range 14 West;

Thence northerly along the section line to the southeast corner of the north half of Section 24, Township 7 North, Range 15 West;

Thence westerly along the center section line to the southwest corner of the north half of Section 23, Township 7 North, Range 15 West;

Thence northerly along the section line to the southeast corner of Section 15, Township 7 North, Range 15 West;

Thence westerly and northerly along the south and west lines of last said Section 15 to the southeast corner of the north half of Section 16, Township 7 North, Range 15 West;

Thence westerly and northerly along the south and west lines of last said north half of Section 16 to the southeast corner of Section 8, Township 7 North, Range 15 West;

Thence westerly along the section line to the southeast corner of Section 12, Township 7 North, Range 16 West;

Thence northerly along the section line to the southeast corner of the north half of last said Section 12;

Thence westerly along the center section line to the center of last said Section 12;

Thence southerly and westerly along the east and south lines of the southwest quarter of last said Section 12 to the northeast corner of Section 14, Township 7 North, Range 16 West;

Thence southerly and westerly along the east and south lines of the northeast quarter of last said Section 14 to the center thereof;

Thence southerly and westerly along the east and south lines of the southwest quarter of last said Section 14 and continuing westerly along the section line to the southwest corner of the east half of Section 15, Township 7 North, Range 16 West;

Thence northerly along the center section line to the center of last said Section 15;

Thence westerly and northerly along the south and west lines of the northwest quarter of last said Section 15 to the southeast corner of Section 9, Township 7 North, Range 16 West;

Thence westerly and northerly along the south and west lines of last said Section 9 to the southeast corner of the north half of Section 8, Township 7 North, Range 16 West;

Thence westerly along the center section line to the center of last said Section 8;

Thence southerly and westerly along the east and south lines of the southwest quarter of last said Section 8, and continuing westerly along the section line to the southwest corner of the east half of Section 7, Township 7 North, Range 16 West;

Thence northerly along the center section line to the center of last said Section 7;

Thence westerly along the center section line to the southwest corner of the north half of last said Section 7;

Thence northerly along the range line to the southeast corner of the north half of Section 12, Township 7 North, Range 17 West;

Thence westerly along the center section line to the southwest corner of the north half of Section 11, Township 7 North, Range 17 West;

Thence northerly along the section line to the southeast corner of fractional Section 3, Township 7 North, Range 17 West;

Thence westerly and northerly along the south and west lines of last said fractional Section 3 to the southeast corner of Section 33, Township 8 North, Range 17 West;

Thence westerly and northerly along the south and west lines of last said Section 33 to the southeast corner of the north half of Section 32 of last said township;

Thence westerly and northerly along the south and west lines of last said north half of Section 32 to the northwest corner thereof;

Thence westerly along the section line to the southwest corner of the east half of Section 25, Township 8 North, Range 18 West;

Thence northerly along the center section line to the center of last said Section 25;

Thence westerly along the center section line to the center of Section 26 of last said township;

Thence northerly along the center section line to the center of Section 14 of last said township;

Thence westerly along the center section line to the center of Section 15 of last said township;

Thence northerly along the center section line to the northwest corner of the east half of the last said Section 15;

Thence westerly along the section line to the southwest corner of Section 9 of last said township;

Thence northerly along the section line to the southeast corner of Section 5 of last said township;

Thence westerly and northerly along the south and west lines of Section 5 to the northwest corner thereof and the point of beginning.

CHAPTER 3. GENERAL PROVISIONS

20. (a) There shall be submitted to the registered voters within the proposed district boundaries at the first countywide consolidated elections held after January 1, 1995, in the Counties of Los Angeles and Kern, the question of whether the district shall be organized and shall exercise its power in accordance with the provisions of this act.

(b) (1) There shall be printed on the ballot at the election the following question:

"Shall the Antelope Valley Storm Water Conservation and Flood

Control District be organized and exercise its powers in accordance with the provisions of the Antelope Valley Storm Water Conservation and Flood Control District Act and impose an initial annual assessment on all properties within the district, to be used for district organization, advance planning, operation, maintenance, repair, and emergency services?"

(2) Following the question shall be the words "Yes" and "No" on separate lines with a voting square at the right.

(c) If a majority of the voters voting on the proposition votes in favor of forming the district, the district may exercise its powers and shall collect an assessment in accordance with subdivision (b) of Section 320.

21. The Cortese-Knox Local Government Reorganization Act of 1985 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code) shall not apply to the formation of the district or the formation or changes in the boundaries of any district division or improvement district. For all other purposes, the district shall be a "district" as that term is defined in the Cortese-Knox Local Government Reorganization Act of 1985.

22. The district may, following notice and a public hearing, annex contiguous land upon approval of its board of directors, by a five-sevenths vote of the board, if the board of supervisors of the county containing the land to be annexed approves of the annexation by a four-fifths vote. In lieu of the required four-fifths vote, the board of supervisors may, at its option, order an election in the area to be annexed.

23. Any judicial action or proceeding to attack, review, set aside, void, annul, or challenge the validity or legality of the formation of the district or an improvement district, any contract entered into by the district or improvement district, any bond or evidence of indebtedness of the district or improvement district, or any assessment, rate, or charge of the district or improvement district shall be commenced within 60 days of the effective date thereof. Any action or proceeding shall be brought pursuant to the provisions of Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. The district may bring an action pursuant to those provisions to determine the validity of any of the matters referred to in this section.

24. Claims for money or damages against the district are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code. Claims not governed thereby, or by other statutes, ordinances, or regulations authorized by law and expressly applicable to the claims, shall be presented to the district's board of directors.

25. If, during the seventh year after formation of the district, 5,000 registered voters of the district sign a petition to terminate the district, the Legislature shall conduct hearings and determine whether to dissolve the district. Nothing in this section precludes the voters of the district from petitioning their representatives regarding

the dissolution of the district.

26. For the purposes of this act, an equivalent drainage unit (EDU) is defined as the ratio of the runoff from a given parcel to the runoff from the median single-family residential parcel and is calculated by the following formula:

$$\text{EDU} = \frac{\text{Area of parcel (acres)} \times \text{runoff factor of parcel}}{\text{Area of median single-family residential parcel} \times \text{runoff factor of single-family residential parcel}}$$

For the purposes of assessment determination, grazing lands have the same runoff factor as undeveloped rural land. For purposes of the initial annual assessments levied pursuant to paragraph (1) of subdivision (b) of Section 320, the runoff factor of a parcel shall not exceed the applicable runoff factor utilized by the Los Angeles County Flood Control District in 1992. In no event shall any future runoff factors exceed any applicable runoff factor which may in the future be utilized by the Los Angeles County Flood Control District.

27. Nothing in this act is intended to exempt the activities, programs, or projects of the district from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) where that act is otherwise applicable.

CHAPTER 4. POWERS AND PURPOSES

50. (a) The purposes of the district are to provide for the control and conservation of the major drainage, flood, and storm waters of the district, and to conserve those waters for beneficial and useful purposes by spreading, storing, retaining, or causing to percolate into the soil within the district, and to protect from damage from those major drainage, flood, or storm waters, the lives and property in the district.

(b) Notwithstanding any other provision of law, the district may not adopt or implement any groundwater management plan pursuant to Part 2.75 (commencing with Section 10750) of Division 6 of the Water Code unless one or more entities within the boundaries of the district authorized to prepare, adopt, and implement a groundwater management plan pursuant to Part 2.75 (commencing with Section 10750) of Division 6 of the Water Code consent to the district preparing, adopting, and implementing that plan. In preparing, adopting, and implementing any plan, the district shall consult with those entities.

51. The district is hereby declared to be a body corporate and politic and has the powers enumerated in this act and all the powers that are reasonably implied therefor.

52. Except as provided in Section 25, the district shall have

perpetual succession.

53. The district may sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.

54. The district may exercise the power of eminent domain in connection with the purposes and activities authorized by this act.

55. The district may take by grant, exchange, purchase, including for cash, promissory note secured by purchase money deed of trust, assumption of existing indebtedness or any combination thereof, gift, lease, devise, or otherwise to hold, use, and enjoy real or personal property of every kind within or outside the district necessary to, or convenient for, the full exercise of its powers.

56. (a) The district may acquire lands, rights-of-way, easements, privileges, and property of every kind and nature, and construct, maintain, and operate any or all works or improvements within the district necessary or proper to carry out any of the purposes of the district, and to complete, extend, add to, repair, or otherwise improve any works or improvements acquired by the district.

(b) (1) The district may jointly plan, construct, own, maintain, operate, regulate, and otherwise manage flood control or storm drain improvements, drainage systems, nuisance water improvements, or water conservation facilities as mutually agreed upon by the district and other entities.

(2) The district shall obtain the approval of the governing city or county prior to the construction of any facility within the jurisdictional boundaries of said entities.

(c) The district is exempted from local agency approval for any routine maintenance of district facilities.

57. (a) The district may impose, or cause to be imposed, assessments in accordance with this act and upon approval of the affected voters.

(b) The district may assess developer drainage fees in accordance with applicable provisions of law. The district may also credit developers for assessed fees when they construct improvements to the regional storm water and flood control system under the control of the district.

(c) The district's ability to impose assessments and collect developer drainage fees does not restrict local agencies from imposing assessments and collecting developer drainage fees and continuing to impose assessments and collect developer drainage fees for drainage and flood control improvements and services as permitted by law.

58. The district may incur indebtedness and may issue notes, bonds, warrants, or other evidence of the indebtedness as provided in this act.

59. (a) The district may make contracts and employ appraisers, consultants, attorneys, engineers, other technical advisers, and all employees necessary or convenient for the administration of the district, the maintenance and operation of any works under its

jurisdiction, and the planning of any works or construction under this act.

(b) The district may establish its own work force to perform force account work up to ten thousand dollars ($10,000) in total value per project except for any emergency work when necessary in order to protect life and property from flood damage at which time a majority vote of the board of directors may increase this limit.

60. (a) The district may contract with any other public agency or any public utility for the use of any rights-of-way, easements, lands, works, or property owned by that agency or utility that are necessary, convenient, or useful to the district or necessary or convenient for the construction, operation, or maintenance of any flood control works, storm drain works, or water conservation works proposed to be financed by the district.

(b) The district may contract with the state, the federal government, or other public agency or utility for the acquisition, design, planning, or construction by that public agency or utility of any flood control, storm drain, or water conservation works financed by the district, or the maintenance, and operation thereof, or for any or all of the foregoing, and the district may carry out any or all of its powers either separately or in conjunction with one or more of those public agencies, and may make any contract or lease or accept any conveyance or property necessary or convenient for the accomplishment of the purposes of the district.

(c) The powers granted by this section shall be liberally construed.

61. The district may develop property for recreational, wildlife habitat, wetlands, storm water quality management, greenbelts, and related uses and purposes, if beneficial and incidental to the use thereof for flood control or the conservation of waters. The district may impose fees, rents, or other charges for these uses and may contract with any person or entity for the use or development of property for these purposes. Notwithstanding any provision of this act, this act does not permit the district to engage in any activity or project development within one and one-half miles of an airfield or runway that would create or lead to unsafe aircraft flight operations.

62. The district may sell or dispose of real property, or any interest therein or part thereof, whenever, in the judgment of the board of directors, the real property or interest therein or part thereof is no longer required for the purposes of the district and to pay any compensation received therefor into the general fund of the district, to be available for the purposes of the district. The district may lease or let real property or personal property, or any interest therein or part thereof, if, in the judgment of the board of directors, the real property or personal property, or interest therein or part thereof, is no longer required for the purposes of the district or may be leased or let for any purpose without interfering with the use thereof for the purposes of the district, and shall pay any compensation received therefor into the general fund of the district, to be available for the

purposes of the district.

63. The district may accept a transfer and conveyance of flood control or storm drain improvements or drainage systems or water conservation facilities lying within or outside the district and thereupon assume sole control and jurisdiction and provide operation and maintenance for those improvements, drainage systems, and water conservation facilities.

64. The district may construct, operate, or maintain, or cause to be constructed, operated, or maintained, works to develop sources of energy and transmission lines for the conveyance thereof. The power generated may be used by the district for its purposes, but may not be offered for sale directly by the district to customers other than a public utility or public agency.

65. The district shall make reasonable efforts to involve all citizens and landowners within the district in the planning and administrative activities of the district.

66. (a) (1) The district shall prepare, not later than three years after the approval of the district by the voters, a plan for flood control and water conservation for the area included within the district, including the suburban, agricultural, and open-space areas.

(2) The board shall include in the plan at least all of the following components:

(A) Flood control and storm water conservation.

(B) Flood peak retarding.

(C) Special zones of benefit for assessment purposes.

(D) Environmental considerations.

(E) Multiple use opportunities.

(F) City and county plans.

(G) Methodologies intended for use. These methodologies shall demonstrate the benefit relationship between a proposed capital project and the area to be assessed.

(3) The district shall establish an advisory committee to assist in the preparation of the plan pursuant to this section and to make recommendations to the board of directors of the district concerning the plan. The advisory committee shall consist of volunteer representatives of urban interests, agricultural interests, industry, business, and other interests as the board of directors of the district determines to be appropriate. In establishing advisory committees, the district may take into consideration the diversity of topography, hydrological conditions, and land use within the large areas covered by the district. In order to assure community dialogue and public support as the plan is developed, advisory committees should by structured to represent the various watershed planning areas of the district. On the basis of land use and hydrology, advisory committee boundaries may overlap the boundaries of one or more internal district boundaries within the district.

(b) (1) The district may plan, construct, own, maintain, operate, regulate, and otherwise manage flood control or storm drain improvements, drainage systems, nuisance water improvements, or

water conservation facilities as mutually agreed upon by the district and the various entities that have jurisdiction over those facilities.

(2) The district shall obtain the approval of the governing city or county prior to the construction of any flood control facility.

(c) The district is exempted from local agency approval for any routine maintenance of district facilities.

67. (a) Except as specified in subdivision (b), all existing drainage maintenance districts and existing flood control and drainage facilities shall remain under the existing jurisdiction and in full effect unless the controlling agency and the district mutually agree to convey any or all of the drainage maintenance district to the district, except those drainage facilities in the unincorporated area of Los Angeles County north of the northerly boundary of the Los Angeles County Flood Control District owned and maintained by the County of Los Angeles and those drainage facilities owned and maintained by the Los Angeles County Flood Control District within the boundary of the proposed district shall become part of the district upon the formation of the district.

(b) The district shall turn over annual proceeds received (1) for purposes of operation, maintenance, and repair prior to the district performing those services or (2) prior to the turnover, by the Cities of Palmdale and Lancaster, and the Counties of Los Angeles and Kern, of their current maintenance districts and flood control and drainage facilities, to the local agencies, in a sum proportionate to the annual proceeds received from the constituents of the local agencies, for the purposes for which they were received, less any associated administrative overhead costs. Any annual proceeds turned over to a local agency but not used by the end of two fiscal years from the date the proceeds were turned over to the local agency shall be returned to the district at the end of that two-year period.

68. The district, working with each local agency within the district, may assume the appropriate responsibilities for the national pollution discharge elimination system (NPDES) nonpoint discharge permit process within the district drainage areas and for each local agency within the district as allowed by law.

69. (a) To the extent permitted by federal law, the territory lying within Edwards Air Force Base shall be subject to any assessment levied by the district pursuant to this act.

(b) The district shall pursue all available federal funds for storm water conservation and flood control purposes.

PART 2. INTERNAL ORGANIZATION

CHAPTER 1. THE BOARD OF DIRECTORS

100. The district shall be governed by the board of directors. The board consists of seven members elected by division as provided in Section 101. Each director shall be a resident of the division the director represents, and a registered voter in that

division. The initial members of the board of directors shall be elected by the voters of the district at the formation election conducted pursuant to Section 20.

101. The district shall be divided into seven divisions for the purpose of electing directors. The divisions shall be numbered first, second, third, fourth, fifth, sixth, and seventh. The boundaries of the divisions are as described in Section 12.

102. The election, terms of office, and related matters concerning members of the board of directors shall be governed by the Uniform District Election Law (Part 3 (commencing with Section 23500) of Division 14 of the Elections Code) unless otherwise provided in this act.

103. (a) The election of subsequent directors shall be held at the time of the general election referred to in Section 2550 of the Elections Code and shall be consolidated therewith.

(b) Candidates shall declare their candidacy no less than 88 and no more than 113 days before the general election. The candidate for director who receives the highest number of votes cast for candidates for the office of director in the division in which he or she seeks election shall be elected to that office.

(c) If a tie vote makes it impossible to determine which of two or more candidates has been elected, the board shall notify the candidates who have received the tie votes to appear before it either personally or by a representative at a time and place designated by the board. The board shall at that time and place determine the tie by lot and the results thereof shall be declared by the board. The candidate chosen shall qualify, take office, and serve as though elected at the preceding general district election.

104. (a) Whenever a sufficient change in the population occurs in the district after its organization which makes it desirable, in the judgment of the board of directors, to adjust the boundary or boundaries of any division or divisions, or whenever any territory is added to, or excluded from, the district, the board of directors shall, by resolution, adjust the boundaries of the division or divisions so as to equalize, as nearly as practicable, the population in the respective divisions after every federal decennial census.

(b) For this purpose, the board of directors may estimate the population by reference to the register of voters used at the last general election, and may adjust the boundaries of the respective divisions without regard to the places or residence of the directors then in office.

(c) (1) No change in the division boundaries shall be made within the four months immediately preceding the election of any director.

(2) A change in division boundaries does not affect the term of office of any director.

(3) If division boundaries are adjusted, the director of the division whose boundaries have been adjusted, until the office becomes vacant by means of term expiration or otherwise, shall continue to

be the director for the respective division bearing the number of his or her division as formerly comprised, whether or not the director is a resident of the division as adjusted.

(4) The successor shall be a resident and voter of the adjusted division.

105. Within 30 days after the approval of the formation of the district by the voters at the election held pursuant to Section 20, the board of directors shall take the official oath of office. The board shall, as soon as practical, meet and organize by the selection of one of the directors as chairperson of the board who shall serve as chairperson for a term of two years. The determination of the terms of office of the original directors shall be in accordance with the Uniform District Election Law (Part 3 (commencing with Section 23500) of Division 14 of the Elections Code). The term of office of all members is thereafter four years.

106. Each director shall receive compensation in an amount not to exceed one hundred dollars ($100) per day for each day of attendance at meetings of the board or for each day of service rendered as a director by request of the board, not exceeding a total of six days in any calendar month, together with any expenses incurred in the performance of his or her duties required or authorized by the board.

107. A vacancy in the office of a member on the board shall be filled pursuant to Section 1780 of the Government Code, provided that the person chosen shall be a resident of, and otherwise qualified to be a director from, the division in which the vacancy occurs.

108. A majority of the members of the board constitutes a quorum, and the decision of a majority of all of the members of the board shall be necessary to take any action, unless otherwise provided in this act. If a meeting is not attended by a majority of the members of the board, a lesser number may adjourn the meeting to a specified time and any meeting may be adjourned by the vote of majority of the members present.

109. The board shall, by resolution, fix a regular time and place of meeting, and notice of each regular meeting shall be published in a newspaper of general circulation within the district. The board shall also provide the method of calling special meetings and of giving notice thereof, but no special meeting may be called upon less than 24 hours' notice, except that in an emergency a special meeting may be called upon not less than three hours' notice or may be held pursuant to a waiver of notice signed by all members of the board and filed with the minutes of the meeting. Any emergency call or waiver shall set forth a general statement of the fact deemed to create the emergency. No defect in the statement shall invalidate the special meeting.

110. The board shall, by resolution, make rules and establish procedures that are necessary and convenient for the operation of the district.

111. The district shall be divided into district divisions for purposes

of funding, planning, project design, and allocation of operation and maintenance costs as provided in Part 4 (commencing with Section 400).

CHAPTER 2. CONTRACTS AND EMPLOYEES

220. Except as otherwise provided in this act, all contracts for construction or repair of works or improvements shall be awarded pursuant to Article 68 (commencing with Section 21000) of Chapter 2 of Part 3 of Division 2 of the Public Contract Code.

221. The board shall appoint a chief engineer for the district who shall be the principal officer of the district and who shall be charged with the duty of managing and administering the affairs of the district in accordance with this act, subject to the direction and control of the board. The chief engineer shall be a registered civil engineer in this state. The chief engineer shall appoint all assistants, engineers, deputies, maintenance workers, and other persons employed by the district.

222. The board shall provide for the number of assistants, engineers, deputies, maintenance workers, and other persons to be employed by the district and for their compensation and duties.

223. At the request of the district board, cities or counties may from time to time assign various officers or employees to perform as ex officio officers or employees of the district at no additional compensation. The district shall reimburse the city or county for all costs and expenses incurred by reason of the performance of those duties.

PART 3. FINANCIAL PROVISIONS

CHAPTER 1. FUNDS AND ACCOUNTS

300. Any funds of the district may be deposited, to the credit of the district, in the treasury of any county or city within the boundaries of the district.

301. The district may establish and maintain any separate funds and accounts that it deems necessary in carrying out its powers and purposes under this act.

CHAPTER 2. BENEFIT ASSESSMENTS

320. (a) The district may impose assessments within an improvement district in accordance with any valid assessment act, bond act, or combination of assessment act and bond act permitted by law. The assessments may be imposed in any manner that reasonably reflects the benefit that will accrue to the area being assessed for the purpose of the assessment, including, but not limited to, the proportionate water runoff from each parcel assessed. For purposes of this section, proportionate storm water runoff may be

used as a measure of benefit pursuant to subdivision (e) of Section 54715 of the Government Code.

(b) (1) Notwithstanding any other provision of law, in the event that a majority of the voters voting on the proposition described in Section 20 vote in its favor, the district shall collect an initial annual assessment of two dollars ($2) per equivalent drainage unit on all properties within the district to be used for district administration, planning, operation, maintenance, repair, and emergency services and an additional annual assessment of three dollars ($3) per equivalent drainage unit on all properties with a density greater than one dwelling unit per two acres for the operation, maintenance, and repair of facilities and upon a majority vote of the district board, for district administration, planning, and emergency services. Funding collected from this assessment shall be used for district administration, planning, operation, maintenance, repair, and emergency services.

(2) The district may impose an assessment in excess of that amount only upon the approval of the voters in accordance with Section 54717 of the Government Code.

321. The district may impose assessments for expenditures made, or expenditures estimated to be required during the next calendar or fiscal year, for any lawful purpose of the district, including, but not limited to, any of the following purposes:

(a) The administration of the district.

(b) The formation expenses of improvement districts.

(c) Engineering and other activities undertaken in connection with the investigation and preparation of a comprehensive plan for flood control and water conservation.

(d) Actions relating to the implementation of the national pollution discharge elimination system (NPDES) permit program.

322. The district may impose assessments within an improvement district by a vote of the voters of that improvement district for improvement district expenditures made, or expenditures estimated to be required during the next calendar or fiscal year, for any lawful purpose of the district, including, but not limited to, any of the following purposes:

(a) Improvement district formation.

(b) Individual district division administration.

(c) Engineering and other activities undertaken in connection with the investigation and preparation of plans, land acquisition, and the design or construction of any work or project within a specific division, combination of divisions, or improvement district.

(d) Operation and maintenance of any district work or project within an improvement district.

(e) Payment of the principal of, and interest on, improvement district special benefit bonds issued in the manner set forth in Chapter 3 (commencing with Section 330) and Chapter 4 (commencing with Section 340).

323. The revenues derived from the assessment shall be used for

no purpose other than the purpose specified at the time of imposition of the assessment.

324. Any assessment imposed shall be proportionate to the benefit derived and to the degree of contribution to runoff from the affected property.

324.5. No assessment for flood control purposes may be imposed pursuant to this chapter on any property that does not contribute to runoff.

325. The district shall appoint an appeals board for the purpose of hearing comments and other evidence from property owners who seek to demonstrate that their property will not benefit from a proposed assessment. The appeals board may make recommendations to the board of directors to waive the imposition of the assessment or adjust the amount of the assessment based on the evidence presented.

326. The Kern County Water Agency, a body politic organized and existing under the Kern County Water Agency Act, currently receives a portion of the ad valorem property tax collected within Kern County, including areas lying within the Antelope Valley Storm Water Conservation and Flood Control District. This tax shall continue to be collected for the benefit of the Kern County Water Agency, or its successor, and shall not be or become a portion of the assessments imposed by the Antelope Valley Storm Water Conservation and Flood Control District. The Kern County Water Agency share of the ad valorem tax shall not be reduced as a result of this act.

CHAPTER 3. IMPROVEMENT BONDS

330. The district may, in any year, issue improvement bonds in accordance with any valid assessment act, bond act, or combination of assessment act and bond act permitted by law.

CHAPTER 4. SPECIAL BENEFIT BONDS

340. (a) The board of directors may determine that a bonded indebtedness should be incurred to pay the cost of any project that will confer a special benefit on the district as a whole, or a special benefit on any district division or improvement district. The principal of, and interest on, the special benefit bonds shall be paid by revenue derived from an annual assessment imposed on the land benefited by the project for which the bonds were issued.

(b) Before adopting a resolution issuing special benefit bonds, the board of directors shall adopt a resolution of intention stating the intention to issue the special benefit bonds, the proposed amount of the bonds, the proposed denomination and maximum rate of interest of the bonds, a description of the proposed project for which the bonds shall be issued, and a description of the area which shall receive a special benefit from the proposed project and in which an

assessment shall be imposed to pay the principal of, and interest on, the bonds. The resolution shall also state the time and place for a hearing by the board of directors on the proposal, at which time any interested person may appear and be heard.

341. (a) Notice of the hearing shall be given by publishing a copy of the resolution of intention in a newspaper of general circulation published in the district, pursuant to Section 6066 of the Government Code, the first publication to be at least 14 days prior to the time fixed for the hearing. The hearing may be consolidated with a hearing on any other proposal affecting the same area.

(b) At the time and place so fixed, or at any time or place to which the hearing is continued, the board of directors shall hold the hearing provided for by the resolution, at which time any interested person may appear and be heard concerning any matter set forth in the resolution or any matter material thereto.

(c) Upon the conclusion of the hearing, the board may abandon the proposal, or order an election on the proposal within the area affected, unless prior to the conclusion of the hearing or any continued hearing, written protests against the proposal signed by 25 percent of the eligible voters within the affected area are filed with the board, in which event further proceedings relating to the proposal shall be suspended for not less than six months following the date of the conclusion of the hearing. If there is no majority protest, the board of directors may not proceed with the proposal before holding an election within the affected area.

(d) A majority of the votes cast at the election shall be required to approve the proposal to issue the bonds.

342. Any defect or irregularity in the proceedings in the calling or conduct of the special bond election shall not affect the validity of the bonds authorized by the election.

343. The board of directors shall prescribe by resolution the form of bonds, which shall include a designation of the district or district division and of the interest coupons attached thereto. The bonds shall be payable annually or semiannually at the discretion of the board each and every year on a day and date at a place or places to be fixed by the board and designated in the bonds, together with interest on all sums unpaid on that date until the whole of the indebtedness shall be paid.

344. The board of directors may divide the principal amount of any issue into two or more series and fix different dates for the bonds of each series. The bonds of one series may be made payable at different times from these of another series. The maturity of each series shall comply with this section. The board may fix a date not more than two years from the date of issuance for the earliest maturity of each series issued.

345. The bonds shall be issued in the denomination the board of directors shall determine.

346. The bonds shall be payable on the date at the place fixed in the bonds, and at the interest rate specified in the bonds, and shall

be made payable annually or semiannually.

347. The bonds shall be numbered consecutively and shall be signed by the chairperson of the board of directors and countersigned by the auditor or other fiscal officer of the district, and the seal of the district shall be affixed thereto. Either or both signatures may be printed, engraved, or lithographed.

348. The interest coupons, if any, of the bonds shall be numbered consecutively and signed by the auditor or other fiscal officer, or by his or her printed, engraved, or lithographed signature.

349. (a) The proceeds from the sale of bonds shall be paid into the district treasury, placed to the credit of the project funds, and expended only for the purpose for which the indebtedness was created. In the alternative, the proceeds of the sale of the bonds may be placed in the treasury of the County of Los Angeles to the credit of the district and the respective district division or divisions or cooperating improvement district or districts for the uses and purposes of the district, or improvement district, and a proper record of the transaction shall be placed upon the books of the Treasurer of Los Angeles County, and the bond funds shall be used exclusively for the purposes mentioned in the resolution calling for the special bond election.

(b) Payments from bond funds shall be made upon demands prepared, presented, allowed, and audited in the same manner as demands upon the funds of the district. Unexpended bond proceeds may be invested in any manner permitted by law for district investments, and any interest earned thereon shall be credited to the project fund and expended only for the purpose for which the indebtedness was created.

350. Any bonds issued under this chapter, and the interest thereon, shall be paid solely by revenue derived from annual benefit assessments imposed pursuant to this act. No improvement district, nor the property therein, shall be liable for the bonded indebtedness of any other improvement district, nor shall any money derived from assessments in any of the several district divisions be used in payment of principal of, or interest on, or otherwise, of the bonded indebtedness chargeable to any other district division or improvement district.

351. Whenever bonds have been authorized by the district, and the proceeds of the sale thereof have been expended as authorized, and the board of directors, by resolution, determines that additional bonds shall be issued for carrying out any of the purposes of this act, the board of directors may again proceed as provided in this chapter for the issuance of bonds.

352. The board of directors may, by resolution, determine that new bonds should be issued for the purpose of refunding any or all of the bonds outstanding of the district or any district division or participating district division or improvement district. The procedure shall be the same as the procedure upon an original issue of bonds. The refunding bonds may be issued and sold in the manner

and form prescribed for an original issue of bonds, and may, if the holders of bonds of an original issue and the board of directors so agree, be exchanged for the original bonds, if the face value of the refunding bonds so exchanged does not exceed the face value of the original bonds. The board of directors may raise money to pay the principal of, and interest on, the refunding bonds in the same manner as prescribed for the payment of bonds of an original issue.

353. Any bonds, original or refunding, may be made callable by resolution of the board of directors adopted at, or prior to, the time of issuing the bonds, and providing for the calling and redemption of the bonds, in numerical order, or by lot, on any interest payment date prior to their fixed maturity, at a premium not exceeding 6 percent above the par value thereof and accrued interest. If any bonds are made callable, a statement to that effect shall be set forth on the face of the bond. Notice of any redemption shall be published in the district pursuant to Section 6063 of the Government Code. The first publication of the notice shall be not less than 30, nor more than 90, days prior to the date fixed for the redemption. After the date fixed for the redemption, if the district has provided funds available for payment of the principal of, and interest on, the bonds so called, interest on the bonds shall thereafter cease.

354. The bonds shall be sold at a public sale to the lowest bidder, after notice of the sale has been given by publication in the district, pursuant to Section 6061 of the Government Code, at least one week prior to the sale and after any other notice which the board of directors may deem proper.

355. The manner of making, submitting, and opening bids, and conducting the sale, and the terms thereof, shall be determined by the board of directors. The board is hereby given the right to reject any and all bids which in the judgment of the board are not in the best interest of the district. If no bids are received, or if all bids are rejected, the board may either readvertise or sell the bonds at private sale.

356. Any bond issued under this chapter is free and exempt from all taxation with the State of California.

357. Any bond issued under this chapter shall be legal investments for all trust funds, and for the funds of all insurance companies, commercial and savings banks, and trust companies, for state school funds, and whenever any money or funds may by law now or hereafter enacted be invested in bonds of cities, cities and counties, counties, school districts, or other districts in this state, the money or funds may be invested in bonds of the district, issued in accordance with this act, and whenever bonds of cities, cities and counties, counties, school districts or other districts may by law be used as security for the performance of any act, the bonds of the district may be so used.

358. The repeal or amendment of this act, or the dissolution or change in the boundaries of the district, district division, or improvement district shall not in any way affect or release any of the

land in the district, district division, or improvement district from its liability on or from the obligations of any outstanding bonds or indebtedness or contracts for which the land is in any way security, until all the bonds and outstanding indebtedness and contracts have been fully paid or discharged.

359. The provisions of this chapter shall apply only to the issuance of special benefit bonds issued in accordance with this chapter.

CHAPTER 5. SHORT-TERM BORROWING

360. The district may borrow money and incur indebtedness in the manner set forth in this chapter by action of the board of directors.

361. Indebtedness may be incurred pursuant to this chapter for any purpose for which the district is authorized to expend funds.

362. Indebtedness incurred under this chapter shall be evidenced by warrants of the district payable not to exceed five years from their date and bearing interest at a rate not to exceed the maximum interest permitted for the sale of bonds of the district.

363. The warrants shall be issued by the district after the adoption by the board of directors of a resolution setting forth the form of the warrant, the maturity date or dates thereof, and the manner of execution thereof.

364. The board of directors may in its resolution provide that the warrant shall be subject to call and redemption prior to maturity, at the option of the district at a price that is determined in the resolution, not exceeding a premium of 6 percent of the par value of the warrants so subject to redemption. The resolution shall fix a method of giving notice of redemption to the holders of warrants to be redeemed and the price at which the warrants shall be subject to redemption. Warrants so subject to call and redemption prior to maturity shall contain a recital to that effect on their face.

365. The warrants issued shall be offered for public sale upon notice inviting sealed bids therefor. The notice shall be given by publication once in a newspaper of general circulation in the district and the sale shall not be held before 10 days after the publication. The board of directors may reject all bids received on public sale and either readvertise or sell the warrants at private sale. The district may sell the warrants at a price below par value not to exceed 6 percent of the par value thereof.

CHAPTER 6. COUNTY AND CITY FUNDING

370. For the purpose of supplementing the general operating revenues of the district, upon request made by the board of directors, the County of Los Angeles, the County of Kern, or any city within the boundaries of the district may grant funds from their general funds, or any other legally available funds, to the district without reimbursement from the district, for use for any purpose of the

district within their respective boundaries for which the agencies are authorized to expend funds, including, but not limited to, expenses incurred or estimated to be incurred during the next fiscal year for each of the following:

(a) The formation and administration of the district.

(b) The preparation of a comprehensive flood control, flood plain management, and water conservation plan for the district for coordinating and managing the disposal of drain, flood, and storm water within the district, and improvement districts within the district for those purposes.

(c) The acquisition of works and the construction, repair, operation, and maintenance of the works for the control and disposal of drain, storm, and flood water, and water conservation within the district. Prior to the transfer of funds, each jurisdiction shall make a finding of mutual benefit.

371. The district shall deposit any county or city funds in a separate account and, upon demand of the county or city, demonstrate that expenditures made therefrom were used only for the purposes set forth in this chapter.

CHAPTER 7. MAXIMUM INTEREST AND DISCOUNT RATES

380. Notwithstanding any other provision of law, a bond or evidence of indebtedness of the district, district division, or improvement district may bear interest at a rate or rates as determined by the board of directors in its discretion, but not to exceed 12 percent per year, unless some higher rate is permitted by law.

381. In addition to interest paid on a bond or evidence of indebtedness of the district, the board of directors may sell the bond or evidence of indebtedness at less than its par or face value not to exceed a discount rate of 6 percent.

PART 4. IMPROVEMENT DISTRICTS

400. Improvement districts may be formed in the district in the same manner as improvement districts are formed in irrigation districts under Part 7 (commencing with Section 23600) of Division 11 of the Water Code. Improvement districts and assessment districts may be formed within the boundaries of any district division. District divisions created under this act may jointly participate in a project or projects.

SEC. 2. The Legislature finds and declares that this act, which is applicable only to the Antelope Valley Storm Water Conservation and Flood Control District, is necessary because of the unique and special storm water and flood control management opportunities and problems in the area included in that district. It is, therefore, declared that a general law within the meaning of Section 16 of Article IV of the California Constitution cannot be made applicable

and that the enactment of this special law is necessary for the conservation, development, control, and use of that water for the public good.

SEC. 3. Section 2 of this act, which transfers territory of the Los Angeles County Flood Control District to the Antelope Valley Storm Water Conservation and Flood Control District, shall become operative only if the creation of the Antelope Valley Storm Water Conservation and Flood Control District is approved by the voters as provided in this act. The effective date of the transfer shall be July 1, 1995. The transfer of the territory from the Los Angeles County Flood Control District to the Antelope Valley Storm Water Conservation and Flood Control District shall not impair the rights of any bondholder or other creditor of the Los Angeles County Flood Control District. Any properties subject to ad valorem taxation to repay any bonded indebtedness of the Los Angeles County Flood Control District shall remain so subject until the bonds are retired.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 765

An act to add Section 6051 to the Penal Code, relating to prisons.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Section 6051 is added to the Penal Code, to read:

6051. The Inspector General shall conduct a management review audit of any warden or superintendent of the state prison who has held his or her position for more than five years. The audit report shall be submitted to the secretary of the agency and the respective director for evaluation and for any response deemed necessary by the director.

SEC. 2. This act shall become operative only if Senate Bill 1462 of the 1993–94 Regular Session is enacted and becomes effective on or before January 1, 1995.

CHAPTER 766

An act to add Chapter 8.2 (commencing with Section 6125) to Title 7 of Part 3 of the Penal Code, relating to corrections, and making an appropriation therefor.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Chapter 8.2 (commencing with Section 6125) is added to Title 7 of Part 3 of the Penal Code, to read:

CHAPTER 8.2. OFFICE OF THE INSPECTOR GENERAL

6125. There is hereby created the office of the Inspector General. The Governor shall appoint the Inspector General subject to Senate confirmation of that appointment.

6126. (a) Inspector General shall be housed and supported by the Youth and Adult Correctional Agency, and shall be responsible for reviewing departmental policy and procedures for conducting investigations and audits of investigatory practices and other audits and investigations of the Department of Corrections, the Department of the Youth Authority, the Board of Prison Terms, the Youthful Offender Parole Board, or the Board of Corrections, as requested by either the Secretary of the Youth and Adult Correctional Agency or a Member of the Legislature, pursuant to the approval of the Inspector General under policies to be developed by the Inspector General with the approval of the secretary.

(b) Upon completion of an investigation or audit, the Inspector General shall provide a response to the requester.

(c) In the accomplishment of investigatory audits, the Inspector General shall also identify areas of full and partial compliance, and noncompliance, with departmental investigatory policies and procedures, specify deficiencies in the completion and documentation of investigatory processes, and recommend corrective actions, including, but not limited to, additional training with respect to investigative policies.

6127. (a) The Department of Corrections, the Department of the Youth Authority, the Board of Prison Terms, the Youthful Offender Parole Board, and the Board of Corrections shall comply with all requests of the Inspector General for any document or record contained on any medium.

(b) The Inspector General may require any employee of either department to be interviewed on a confidential basis. Any employee so requested shall comply and shall have time afforded by the appointing authority for the purpose of an interview with the Inspector General or his or her designee. Any record created by an

interview shall be deemed confidential for use by the secretary and the Inspector General only. It is not the purpose of these communications to address disciplinary action or grievance procedures which may routinely occur.

6128. (a) The office of Inspector General may receive communications from any individual employed by any department, board, or authority who believes he or she may have information that may describe a variance from departmental investigatory policies and procedures. The identity of the person providing the information shall be held as confidential by the Inspector General and may be disclosed only to the secretary or the Governor, or the appropriate director or chairperson, in confidence or a law enforcement agency in the furtherance of their duties. It is not the purpose of these communications to redress any single disciplinary action or grievance that may routinely occur.

(b) Any request to conduct an investigation shall be in writing. The request shall be confidential and is not subject to disclosure under the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(c) The identity of the person providing the information that initiated the investigation shall not be disclosed without that person's written permission, except to a law enforcement agency in the furtherance of its duties.

6129. (a) Any state employee at any rank and file, supervisory, or managerial level who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee of either department for having disclosed what the employee, in good faith, believed to be improper activities shall be disciplined by adverse action as provided in Section 19572 of the Government Code. If no adverse action is instituted by the appointing power, the State Personnel Board shall invoke adverse action as provided in Section 19583.5 of the Government Code.

(b) In addition to all other penalties provided by law, any state employee at any rank and file, supervisory, or managerial level who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee of either department for having disclosed what the employee, in good faith, believed to be improper activities shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court if the acts of the offending party are proven to be malicious. If reliability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law.

(c) The Inspector General may refer matters involving criminal conduct to the proper law enforcement authorities in the appropriate jurisdiction for further action.

SEC. 2. The Department of Finance shall transfer, from the appropriation for the support of the Department of Corrections and the Department of the Youth Authority contained in the Budget Act of 1994, an amount not to exceed two hundred fifty thousand dollars

($250,000) to the Youth and Adult Correctional Agency for the purpose of establishing the office of the Inspector General as provided for in this act.

CHAPTER 767

An act to add and repeal Section 739.3 of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. The Legislature finds and declares that electric utility customers residing in extreme climatic zones have higher electric bills than those customers living in other climatic zones and that alternative rate structures can reduce customer costs during extreme weather months.

The Legislature further finds and declares that the current inverted electric rate structure does not reflect costs imposed on the electric system by high-customer usage during extreme weather months.

SEC. 2. Section 739.3 is added to the Public Utilities Code, to read:

739.3. (a) Nothing in Section 739 shall prohibit the development of experimental electrical residential rate schedules where the energy component of the rate charged to the customers paying the experimental rate decreases as consumption increases, if the utility demonstrates and the commission finds that the consumption pattern of those participating customers causes the energy costs of the utility to decrease as consumption increases. Revenues foregone from participating customers as a result of the experimental rate schedule shall not be recovered from other customers.

(b) This section is applicable only within extreme climatic zones 15 and 16, as defined by the State Energy Resources Conservation and Development Commission, and that are located within the service territory of the Southern California Edison Company, and only for residential customers who purchase and install high-efficiency heating or cooling equipment for whom the Southern California Edison Company demonstrates and the commission finds that the consumption pattern of those participating customers causes the energy costs of the utility to decrease as consumption increases.

(c) Nothing in this section shall cause any changes to the baseline quantities or rates established for these climatic zones.

(d) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

CHAPTER 768

An act to amend Sections 3005 and 3800 of the Fish and Game Code, relating to wildlife, and making an appropriation therefor.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Section 3005 of the Fish and Game Code is amended to read:

3005. (a) It is unlawful to take birds or mammals with any net, pound, cage, trap, set line or wire, or poisonous substance, or to possess birds or mammals so taken, whether taken within or without this state, except as provided in this code or, when relating to ongoing mining operations, in accordance with a mitigation plan approved by the department.

(b) (1) Mitigation plans relating to mining operations approved by the department shall, among other criteria, require avoidance of take, where feasible, and include reasonable and practicable methods of mitigating the unavoidable take of birds and mammals. When approving mitigation plans, the department shall consider the use of the best available technology on a site-specific basis.

(2) Mitigation plans relating to mining operations approved by the department shall include provisions that address circumstances where mining operations contribute to bird deaths, including ponding of process solutions on heap leach pads and exposure of process solution channels, solution ponds, and tailing ponds.

(3) The mine operator shall prepare a mitigation plan that shall be submitted to the department for approval. For ongoing mining operations, the mitigation plan shall result in an overall reduction in take of avian or mammal species. The department shall provide an opportunity for public review and comment on each mitigation plan during the department's approval process. The mitigation plan shall be prepared on a site-specific basis and may provide for offsite mitigation measures designed to reduce avian mortality. The mine operator shall submit monthly monitoring reports on avian mortality to the department to aid in evaluating the effectiveness of onsite mitigation measures.

(4) The department shall monitor and evaluate implementation of the mitigation plan by the mine operator and require modification of the plan or other remedial actions to be taken if the overall reduction in take of avian or mammal species required pursuant to paragraph (3) is not being achieved.

(5) The mining operator shall reimburse the department for its direct costs to provide appropriate notice of the mitigation plan to affected local government entities and other affected parties. The mine operator shall provide the department a limited number of

copies, as determined by the department, of the mitigation plan for public review.

(c) Proof of possession of any bird or mammal that does not show evidence of having been taken by means other than a net, pound, cage, trap, set line or wire, or poisonous substance, is prima facie evidence that the birds or mammals were taken in violation of this section.

(d) This section does not apply to the lawful taking of fur-bearing mammals, nongame birds, nongame mammals, or mammals found to be injuring crops or property, to the taking of birds or mammals under depredation permits, to taking by employees of the department acting in an official capacity, or to taking in accordance with the conditions of a scientific or propagation permit by the holder of that permit.

SEC. 2. Section 3800 of the Fish and Game Code is amended to read:

3800. (a) All birds occurring naturally in California that are not resident game birds, migratory game birds, or fully protected birds are nongame birds. It is unlawful to take any nongame bird except as provided in this code or in accordance with regulations of the commission or, when relating to mining operations, a mitigation plan approved by the department.

(b) (1) Mitigation plans relating to mining operations approved by the department shall, among other criteria, require avoidance of take, where feasible, and include reasonable and practicable methods of mitigating the unavoidable take of birds and mammals. When approving mitigation plans, the department shall consider the use of the best available technology on a site-specific basis.

(2) Mitigation plans relating to mining operations approved by the department shall include provisions that address circumstances where mining operations contribute to bird deaths, including ponding of process solutions on heap leach pads and exposure of process solution channels, solution ponds, and tailing ponds.

(3) The mine operator shall prepare a mitigation plan that shall be submitted to the department for approval. For ongoing mining operations, the mitigation plan alone or in conjunction with regulations adopted by the commission shall result in an overall reduction in take of avian or mammal species. The department shall provide an opportunity for public review and comment on each mitigation plan during the department's approval process. The mitigation plan shall be prepared on a site-specific basis and may provide for offsite mitigation measures designed to reduce avian mortality. The mine operator shall submit monthly monitoring reports on avian mortality to the department to aid in evaluating the effectiveness of onsite mitigation measures.

(4) The mining operator shall reimburse the department for its direct costs to provide appropriate notice of the mitigation plan to affected local government entities and other affected parties. The mine operator shall provide the department a limited number of

copies, as determined by the department, of the mitigation plan for public review.

(c) The department shall monitor and evaluate implementation of the mitigation plan by the mine operator and require modification of the plan or other remedial actions to be taken if the overall reduction in take of avian or mammal species required pursuant to paragraph (3) is not being achieved.

CHAPTER 769

An act to amend Section 14771 of, and to add Sections 11530 and 14775 to, the Government Code, relating to state agencies.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Section 11530 is added to the Government Code, to read:

11530. (a) (1) The office shall hear and render a decision on any appeal filed by a business, pursuant to subdivision (c) of Section 14775, in the event the business contests the certification by a state agency head that reporting requirements meet established criteria and shall not be eliminated.

(2) Before a business may file an appeal with the office pursuant to subdivision (c) of Section 14775, the business shall file a challenge to a form or report required by a state agency with that state agency. Within 60 days of filing the challenge with a state agency, the state agency shall either eliminate the form or report or provide written justification for its continued use.

(3) A business may appeal a state agency's written justification for the continued use of a form or report with the office.

(4) If a state agency fails to respond within 60 days of the filing of a challenge pursuant to paragraph (2), the business shall have an immediate right to file an appeal with the office.

(b) No later than January 1, 1996, the office shall adopt procedures governing the filing, hearing, and disposition of appeals. The procedures shall include, but shall not be limited to, provisions that assure that appeals are heard and decisions rendered by the office in a fair, impartial, and timely fashion.

(c) The office may charge appellants a reasonable fee to pay for costs it incurs in complying with this section.

(d) For purposes of this section, "office" means the Office of Administrative Hearings.

SEC. 2. Section 14771 of the Government Code is amended to read:

14771. (a) The director, through the forms management center,

shall do all of the following:

(1) Establish a State Forms Management Program for all state agencies, and provide assistance in establishing internal forms management capabilities.

(2) Study, develop, coordinate and initiate forms of interagency and common administrative usage, and establish basic state design and specification criteria to effect the standardization of public-use forms.

(3) Provide assistance to state agencies for economical forms design and forms art work composition and establish and supervise control procedures to prevent the undue creation and reproduction of public-use forms.

(4) Provide assistance, training, and instruction in forms management techniques to state agencies, forms management representatives, and departmental forms coordinators, and provide direct administrative and forms management assistance to new state organizations as they are created.

(5) Maintain a central cross index of public-use forms to facilitate the standardization of these forms, to eliminate redundant forms, and to provide a central source of information on the usage and availability of forms.

(6) Utilize appropriate procurement techniques to take advantage of competitive bidding, consolidated orders, and contract procurement of forms, and work directly with the State Printer toward more efficient, economical and timely procurement, receipt, storage, and distribution of state forms.

(7) Coordinate the forms management program with the existing state archives and records management program to insure timely disposition of outdated forms and related records.

(8) Conduct periodic evaluations of the effectiveness of the overall forms management program and the forms management practices of the individual state agencies, and maintain records which indicate net dollar savings which have been realized through centralized forms management.

(9) Develop and promulgate rules and standards to implement the overall purposes of this section.

(10) Create and maintain by July 1, 1986, a complete and comprehensive inventory of public-use forms in current use by the state.

(11) Establish and maintain, by July 1, 1986, an index of all public-use forms in current use by the state.

(12) Assign, by January 1, 1987, a control number to all public-use forms in current use by the state.

(13) Establish a goal to reduce the existing burden of state collections of public information by 30 percent by July 1, 1987, and to reduce that burden by an additional 15 percent by July 1, 1988.

(14) Delegate implementing authority to state agencies where the delegation will result in the most timely and economical method of accomplishing the responsibilities set forth in this section.

The director, through the forms management center, may require any agency to revise any public-use form which the director determines is inefficient.

(b) Due to the need for tax forms to be available to the public on a timely basis, all tax forms, including returns, schedules, notices, and instructions prepared by the Franchise Tax Board for public use in connection with its administration of the Personal Income Tax Law, Senior Citizens Property Tax Assistance and Postponement Law, Bank and Corporation Tax Law, and the Political Reform Act of 1974 and the State Board of Equalization's administration of county assessment standards, state-assessed property, timber tax, sales and use tax, hazardous substances tax, alcoholic beverage tax, cigarette tax, motor vehicle fuel license tax, use fuel tax, energy resources surcharge, emergency telephone users surcharge, insurance tax, and universal telephone service tax shall be exempt from subdivision (a), and, instead, each board shall do all of the following:

(1) Establish a goal to standardize, consolidate, simplify, efficiently manage, and, where possible, reduce the number of tax forms.

(2) Create and maintain, by July 1, 1986, a complete and comprehensive inventory of tax forms in current use by the board.

(3) Establish and maintain, by July 1, 1986, an index of all tax forms in current use by the board.

(4) Report to the Legislature, by January 1, 1987, on its progress to improve the effectiveness and efficiency of all tax forms.

(c) The director, through the forms management center, shall develop and maintain, by December 31, 1995, an ongoing master inventory of all nontax reporting forms required of businesses by state agencies, including a schedule for notifying each state agency of the impending expiration of certain report review requirements pursuant to subdivision (b) of Section 14775.

SEC. 3. Section 14775 is added to the Government Code, to read:

14775. (a) By June 30, 1995, each state agency shall inventory all reports and forms it requires businesses to complete and submit in order to comply with agency requirements. As part of this inventory, each state agency shall eliminate all forms it determines are no longer needed to enable the agency to carry out its statutory responsibilities. By June 30, 1995, each state agency shall submit this inventory to the Director of General Services in order to enable the director to carry out his or her responsibilities under subdivision (c) of Section 14771.

(b) Commencing December 31, 1995, and annually thereafter, each state agency shall review one-third of the reports and forms it requires businesses to submit for compliance purposes, so that each report or form is reviewed on a triennial basis. Upon review, a report or form shall be eliminated unless the agency head certifies that each reporting requirement meets all of the following criteria:

(1) The continued reporting requirement is necessary for the agency to meet specifically identified statutory responsibilities.

(2) The agency has authority to require the report.

(3) The report is not duplicatory of, or in conflict with, other reports required of business by the agency or other agencies of state government.

(4) The information cannot be obtained in a more cost-effective manner.

(5) The agency actually reviewed, and is actively using, the information obtained in the previous reports required of business.

(c) If an agency head certifies that a reporting requirement meets the criteria specified in subdivision (b), any business required to comply with that requirement may, consistent with Section 8526, appeal that certification to the Office of Administrative Hearings.

(d) Notwithstanding Section 14773, this section shall apply to all state agencies as defined in Section 11000.

(e) This section shall not apply to any report or form required by statute, any regulation adopted pursuant to the Administrative Procedure Act (Ch. 3.5 (commencing with Section 11340), Pt. 1), or any judicial or administrative order.

(f) This section shall not be construed to eliminate any requirement imposed on a state agency to comply with the rulemaking portion of the Administrative Procedure Act (Ch. 3.5 (commencing with Section 11340), Pt. 1).

CHAPTER 770

An act to amend Sections 1203.016, 1208.2, 1208.3, 1208.5, and 2900.5 of the Penal Code, relating to local corrections.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Section 1203.016 of the Penal Code is amended to read:

1203.016. (a) Notwithstanding any other provision of law, the board of supervisors of any county may authorize the correctional administrator, as defined in subdivision (h), to offer a program under which minimum security inmates and low-risk offenders committed to a county jail or other county correctional facility or granted probation, or inmates participating in a work furlough program, may voluntarily participate in a home detention program during their sentence in lieu of confinement in the county jail or other county correctional facility or program under the auspices of the probation officer.

(b) The board of supervisors may prescribe reasonable rules and regulations under which a home detention program may operate. As a condition of participation in the home detention program, the

inmate shall give his or her consent in writing to participate in the home detention program and shall in writing agree to comply with the rules and regulations of the program, including, but not limited to, the following rules:

(1) The participant shall remain within the interior premises of his or her residence during the hours designated by the correctional administrator.

(2) The participant shall admit any person or agent designated by the correctional administrator into his or her residence at any time for purposes of verifying the participant's compliance with the conditions of his or her detention.

(3) The participant shall agree to the use of electronic monitoring or supervising devices for the purpose of helping to verify his or her compliance with the rules and regulations of the home detention program. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the participant and the person supervising the participant which is to be used solely for the purposes of voice identification.

(4) The participant shall agree that the correctional administrator in charge of the county correctional facility from which the participant was released may, without further order of the court, immediately retake the person into custody to serve the balance of his or her sentence if the electronic monitoring or supervising devices are unable for any reason to properly perform their function at the designated place of home detention, if the person fails to remain within the place of home detention as stipulated in the agreement, if the person willfully fails to pay fees to the provider of electronic home detention services, as stipulated in the agreement, subsequent to the written notification of the participant that the payment has not been received and that return to custody may result, or if the person for any other reason no longer meets the established criteria under this section. A copy of the agreement shall be delivered to the participant and a copy retained by the correctional administrator.

(c) Whenever the peace officer supervising a participant has reasonable cause to believe that the participant is not complying with the rules or conditions of the program, or that the electronic monitoring devices are unable to function properly in the designated place of confinement, the peace officer may, under general or specific authorization of the correctional administrator, and without a warrant of arrest, retake the person into custody to complete the remainder of the original sentence.

(d) Nothing in this section shall be construed to require the correctional administrator to allow a person to participate in this program if it appears from the record that the person has not satisfactorily complied with reasonable rules and regulations while in custody. A person shall be eligible for participation in a home detention program only if the correctional administrator concludes that the person meets the criteria for release established under this

section and that the person's participation is consistent with any reasonable rules and regulations prescribed by the board of supervisors or the administrative policy of the correctional administrator.

(1) The rules and regulations and administrative policy of the program shall be written and reviewed on an annual basis by the county board of supervisors and the correctional administrator. The rules and regulations shall be given to or made available to any participant upon request.

(2) The correctional administrator, or his or her designee, shall have the sole discretionary authority to permit program participation as an alternative to physical custody. All persons referred or recommended by the court to participate in the home detention program pursuant to subdivision (e) who are denied participation or all persons removed from program participation shall be notified in writing of the specific reasons for the denial or removal. The notice of denial or removal shall include the participant's appeal rights, as established by program administrative policy.

(e) The court may recommend or refer a person to the correctional administrator for consideration for placement in the home detention program. The recommendation or referral of the court shall be given great weight in the determination of acceptance or denial. At the time of sentencing or at any time that the court deems it necessary, the court may restrict or deny the defendant's participation in a home detention program.

(f) The correctional administrator may permit home detention program participants to seek and retain employment in the community, attend psychological counseling sessions or educational or vocational training classes, or seek medical and dental assistance. Willful failure of the program participant to return to the place of home detention not later than the expiration of any period of time during which he or she is authorized to be away from the place of home detention pursuant to this section and unauthorized departures from the place of home detention are punishable as provided in Section 4532.

(g) The board of supervisors may prescribe a program administrative fee to be paid by each home detention participant that shall be determined according to his or her ability to pay. Inability to pay all or a portion of the program fees shall not preclude participation in the program, and eligibility shall not be enhanced by reason of ability to pay. All program administration and supervision fees shall be administered in compliance with Section 1208.2.

(h) As used in this section, the following words have the following meanings:

(1) "Correctional administrator" means the sheriff, probation officer, or director of the county department of corrections.

(2) "Minimum security inmate" means an inmate who, by established local classification criteria, would be eligible for

placement in a Type IV local detention facility, as described in Title 15 of the California Code of Regulations, or for placement into the community for work or school activities, or who is determined to be a minimum security risk under a classification plan developed pursuant to Section 1050 of Title 15 of the California Code of Regulations.

(3) "Low-risk offender" means a probationer, as defined by the National Institute of Corrections model probation system.

(i) Notwithstanding any other law, the police department of a city where an office is located to which persons on an electronic monitoring program report may require the county correctional administrator to provide information concerning those persons. This information shall be limited to the name, address, date of birth, and offense committed by the home detainee. Any information received by a police department pursuant to this paragraph shall be used only for the purpose of monitoring the impact of home detention programs on the community.

(j) It is the intent of the Legislature that home detention programs established under this section maintain the highest public confidence, credibility, and public safety. In the furtherance of these standards, the following shall apply:

(1) The correctional administrator, with the approval of the board of supervisors, may administer a home detention program pursuant to written contracts with appropriate public or private agencies or entities to provide specified program services. No public or private agency or entity may operate a home detention program in any county without a written contract with that county's correctional administrator. However, this does not apply to the use of electronic monitoring by the California Department of Corrections or the Department of the Youth Authority as established in Section 3004. No public or private agency or entity entering into a contract may itself employ any person who is in the home detention program.

(2) Program acceptance shall not circumvent the normal booking process for sentenced offenders. All home detention program participants shall be supervised.

(3) (A) All privately operated home detention programs shall be under the jurisdiction of, and subject to the terms and conditions of the contract entered into with, the correctional administrator.

(B) Each contract shall include, but not be limited to, all of the following:

(i) A provision whereby the private agency or entity agrees to operate in compliance with any available standards promulgated by state correctional agencies and bodies, including the Board of Corrections, and all statutory provisions and mandates, state and county, as appropriate and applicable to the operation of home detention programs and the supervision of sentenced offenders in a home detention program.

(ii) A provision that clearly defines areas of respective responsibility and liability of the county and the private agency or

entity.

(iii) A provision that requires the private agency or entity to demonstrate evidence of financial responsibility, submitted and approved by the board of supervisors, in amounts and under conditions sufficient to fully indemnify the county for reasonably foreseeable public liability, including legal defense costs, that may arise from, or be proximately caused by, acts or omissions of the contractor. The contract shall provide for annual review by the correctional administrator to ensure compliance with requirements set by the board of supervisors and for adjustment of the financial responsibility requirements if warranted by caseload changes or other factors.

(iv) A provision that requires the private agency or entity to provide evidence of financial responsibility, such as certificates of insurance or copies of insurance policies, prior to commencing any operations pursuant to the contract or at any time requested by the board of supervisors or correctional administrator.

(v) A provision that permits the correctional administrator to immediately terminate the contract with a private agency or entity at any time that the contractor fails to demonstrate evidence of financial responsibility.

(C) All privately operated home detention programs shall comply with all appropriate, applicable ordinances and regulations specified in subdivision (a) of Section 1208.

(D) The board of supervisors, the correctional administrator, and the designee of the correctional administrator shall comply with Section 1090 of the Government Code in the consideration, making, and execution of contracts pursuant to this section.

(E) The failure of the private agency or entity to comply with statutory provisions and requirements or with the standards established by the contract and with the correctional administrator may be sufficient cause to terminate the contract.

(F) Upon the discovery that a private agency or entity with whom there is a contract is not in compliance pursuant to this paragraph, the correctional administrator shall give 60 days' notice to the director of the private agency or entity that the contract may be canceled if the specified deficiencies are not corrected.

(G) Shorter notice may be given or the contract may be canceled without notice whenever a serious threat to public safety is present because the private agency or entity has failed to comply with this section.

(k) For purposes of this section, "evidence of financial responsibility" may include, but is not limited to, certified copies of any of the following:

(1) A current liability insurance policy.

(2) A current errors and omissions insurance policy.

(3) A surety bond.

SEC. 2. Section 1208.2 of the Penal Code is amended to read:

1208.2. (a) (1) This section shall apply to individuals authorized

to participate in a work furlough program pursuant to Section 1208, or to individuals authorized to participate in an electronic home detention program pursuant to Section 1203.016, or to individuals authorized to participate in a county parole program pursuant to Article 3.5 (commencing with Section 3074) of Chapter 8 of Title 1 of Part 3.

(2) As used in this section, as appropriate, "administrator" means the sheriff, probation officer, director of the county department of corrections, or county parole administrator.

(b) (1) A board of supervisors which implements programs identified in paragraph (1) of subdivision (a), may prescribe a program administrative fee and an application fee, that together shall not exceed the pro rata cost of the program to which the person is accepted, including equipment, supervision, and other operating costs, except as provided in paragraph (2).

(2) With regard to a privately operated electronic home detention program pursuant to Section 1203.016, the limitation, described in paragraph (1), in prescribing a program administrative fee and application fee shall not apply.

(c) The correctional administrator, or his or her designee, shall not have access to a person's financial data prior to granting or denying a person's participation in, or assigning a person to, any of the programs governed by this section.

(d) The correctional administrator, or his or her designee, shall not consider a person's ability or inability to pay all or a portion of the program fee for the purposes of granting or denying a person's participation in, or assigning a person to, any of the programs governed by this section.

(e) For purposes of this section, "ability to pay" means the overall capability of the person to reimburse the costs, or a portion of the costs, of providing supervision and shall include, but shall not be limited to, consideration of all of the following factors:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the administrator, or his or her designee, consider a period of more than six months from the date of acceptance into the program for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the person shall be able to obtain employment within the six-month period from the date of acceptance into the program.

(4) Any other factor that may bear upon the person's financial capability to reimburse the county for the fees fixed pursuant to subdivision (b).

(f) The administrator, or his or her designee, may charge a person the fee set by the board of supervisors or any portion of the fee and may determine the method and frequency of payment. Any fee the administrator, or his or her designee, charges pursuant to this section shall not in any case be in excess of the fee set by the board of

supervisors and shall be based on the person's ability to pay. The administrator, or his or her designee, shall have the option to waive the fees for program supervision when deemed necessary, justified, or in the interests of justice. The fees charged for program supervision may be modified or waived at any time based on the changing financial position of the person. All fees paid by persons for program supervision shall be deposited into the general fund of the county.

(g) No person shall be denied consideration for, or be removed from, participation in any of the programs to which this section applies because of an inability to pay all or a portion of the program supervision fees. At any time during a person's sentence, the person may request that the administrator, or his or her designee, modify or suspend the payment of fees on the grounds of a change in circumstances with regard to the person's ability to pay.

(h) If the person and the administrator, or his or her designee, are unable to come to an agreement regarding the person's ability to pay, or the amount which is to be paid, or the method and frequency with which payment is to be made, the administrator, or his or her designee, shall advise the appropriate court of the fact that the person and administrator, or his or her designee, have not been able to reach agreement and the court shall then resolve the disagreement by determining the person's ability to pay, the amount which is to be paid, and the method and frequency with which payment is to be made.

(i) At the time a person is approved for any of the programs to which this section applies, the administrator, or his or her designee, shall furnish the person a written statement of the person's rights in regard to the program for which the person has been approved, including, but not limited to, both of the following:

(1) The fact that the person cannot be denied consideration for or removed from participation in the program because of an inability to pay.

(2) The fact that if the person is unable to reach agreement with the administrator, or his or her designee, regarding the person's ability to pay, the amount which is to be paid, or the manner and frequency with which payment is to be made, that the matter shall be referred to the court to resolve the differences.

(j) In all circumstances where a county board of supervisors has approved a program administrator, as described in Sections 1203.016 and 1208, to enter into a contract with a private agency or entity to provide specified program services, the program administrator shall ensure that the provisions of this section are contained within any contractual agreement for this purpose. All privately operated home detention programs shall comply with all appropriate, applicable ordinances and regulations specified in subdivision (a) of Section 1208.

(k) This section shall remain operative until January 1, 1999, and as of that date is repealed.

SEC. 3. Section 1208.3 of the Penal Code is amended to read:

1208.3. The administrator is not prohibited by subdivision (c) of Section 1208.2 from verifying any of the following:

(a) That the prisoner is receiving wages at a rate of pay not less than the prevailing minimum wage requirement as provided for in subdivision (c) of Section 1208.

(b) That the prisoner is working a specified minimum number of required hours.

(c) That the prisoner is covered under an appropriate or suitable workers' compensation insurance plan as may otherwise be required by law.

The purpose of the verification shall be solely to insure that the prisoner's employment rights are being protected, that the prisoner is not being taken advantage of, that the job is suitable for the prisoner, and that the prisoner is making every reasonable effort to make a productive contribution to the community.

(d) This section shall remain operative until January 1, 1999, and as of that date is repealed.

SEC. 4. Section 1208.5 of the Penal Code is amended to read:

1208.5. The boards of supervisors of two or more counties having work furlough programs established pursuant to Section 1208, home detention programs established pursuant to Section 1203.016, or county parole programs established pursuant to Article 3.5 (commencing with Section 3074) of Chapter 8 of Title 1 of Part 3, may enter into agreements whereby a person sentenced to, or imprisoned in, the jail of one county, but regularly residing in another county or regularly employed in another county, may be transferred from the custody of the sheriff, administrator, as defined in paragraph (2) of subdivision (a) of Section 1208.2, or their designees, of the county in which he or she is confined, to the custody of the appropriate administrator of the county in which he or she resides or is employed, in order that he or she may be enabled to continue in his or her regular employment or education in the other county through that county's work furlough program, home detention program, or county parole program. These agreements may make provision for the support of transferred persons by the county from which they are transferred. The board of supervisors of any county may, by ordinance, delegate the authority to enter into these agreements to the work furlough administrator, corrections administrator, county home detention program administrator, county board of parole commissioners, county parole administrator, or their designees.

This section shall remain operative until January 1, 1999, and as of that date is repealed.

SEC. 5. Section 1208.5 of the Penal Code is amended to read:

1208.5. The boards of supervisors of two or more counties having work furlough programs may enter into agreements whereby a person sentenced to, or imprisoned in, the jail of one county, but regularly residing in another county or regularly employed in

another county, may be transferred by the sheriff of the county in which he or she is confined to the jail of the county in which he or she resides or is employed, in order that he or she may be enabled to continue in his or her regular employment or education in the other county through the county's work furlough program. This agreement may make provision for the support of transferred persons by the county from which they are transferred. The board of supervisors of any county may, by ordinance, delegate the authority to enter into these agreements to the work furlough administrator.

This section shall become operative on January 1, 1999.

SEC. 6. Section 2900.5 of the Penal Code, as amended by Section 9 of Chapter 437 of the Statutes of 1991, is amended to read:

2900.5. (a) In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, including, but not limited to, any time spent in a jail, camp, work furlough facility, halfway house, rehabilitation facility, hospital, prison, juvenile detention facility, similar residential institution, or home detention program, all days of custody of the defendant, including days served as a condition of probation in compliance with a court order, and including days credited to the period of confinement pursuant to Section 4019, shall be credited upon his or her term of imprisonment, or credited to any fine which may be imposed, at the rate of not less than thirty dollars ($30) per day, or more, in the discretion of the court imposing the sentence. If the total number of days in custody exceeds the number of days of the term of imprisonment to be imposed, the entire term of imprisonment shall be deemed to have been served. In any case where the court has imposed both a prison or jail term of imprisonment and a fine, any days to be credited to the defendant shall first be applied to the term of imprisonment imposed, and thereafter the remaining days, if any, shall be applied to the fine.

(b) For the purposes of this section, credit shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted. Credit shall be given only once for a single period of custody attributable to multiple offenses for which a consecutive sentence is imposed.

(c) For the purposes of this section, "term of imprisonment" includes any period of imprisonment imposed as a condition of probation or otherwise ordered by a court in imposing or suspending the imposition of any sentence, and also includes any term of imprisonment, including any period of imprisonment prior to release on parole and any period of imprisonment and parole, prior to discharge, whether established or fixed by statute, by any court, or by any duly authorized administrative agency.

(d) It shall be the duty of the court imposing the sentence to determine the date or dates of any admission to and release from custody prior to sentencing, and the total number of days to be

credited pursuant to this section. The total number of days to be credited shall be contained in the abstract of judgment provided for in Section 1213.

(e) It shall be the duty of any agency to which a person is committed to apply the credit provided for in this section for the period between the date of sentencing and the date the person is delivered to the agency.

(f) If a defendant serves time in a camp, work furlough facility, halfway house, rehabilitation facility, hospital, juvenile detention facility, similar residential facility, or home detention program in lieu of imprisonment in county jail, and the statute under which the defendant is sentenced requires a mandatory minimum period of time in jail, the time spent in these facilities or programs shall qualify as mandatory time in jail.

(g) Notwithstanding any other provision of this code as it pertains to the sentencing of convicted offenders, nothing in this section is to be construed as authorizing the sentencing of convicted offenders to any of the facilities or programs mentioned herein.

(h) This section shall remain operative until January 1, 1999, and as of that date is repealed.

SEC. 7. Section 2900.5 of the Penal Code, as added by Section 10 of Chapter 437 of the Statutes of 1991, is amended to read:

2900.5. (a) In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, including but not limited to any time spent in a jail, camp, work furlough facility, halfway house, rehabilitation facility, hospital, prison, juvenile detention facility, or similar residential institution, all days of custody of the defendant, including days served as a condition of probation in compliance with a court order, and including days credited to the period of confinement pursuant to Section 4019, shall be credited upon his or her term of imprisonment, or credited to any fine which may be imposed, at the rate of not less than thirty dollars ($30) per day, or more, in the discretion of the court imposing the sentence. If the total number of days in custody exceeds the number of days of the term of imprisonment to be imposed, the entire term of imprisonment shall be deemed to have been served. In any case where the court has imposed both a prison or jail term of imprisonment and a fine, any days to be credited to the defendant shall first be applied to the term of imprisonment imposed, and thereafter the remaining days, if any, shall be applied to the fine.

(b) For the purposes of this section, credit shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted. Credit shall be given only once for a single period of custody attributable to multiple offenses for which a consecutive sentence is imposed.

(c) For the purposes of this section, "term of imprisonment" includes any period of imprisonment imposed as a condition of probation or otherwise ordered by a court in imposing or suspending

the imposition of any sentence, and also includes any term of imprisonment, including any period of imprisonment prior to release on parole and any period of imprisonment and parole, prior to discharge, whether established or fixed by statute, by any court, or by any duly authorized administrative agency.

(d) It shall be the duty of the court imposing the sentence to determine the date or dates of any admission to, and release from, custody prior to sentencing and the total number of days to be credited pursuant to this section. The total number of days to be credited shall be contained in the abstract of judgment provided for in Section 1213.

(e) It shall be the duty of any agency to which a person is committed to apply the credit provided for in this section for the period between the date of sentencing and the date the person is delivered to the agency.

(f) Notwithstanding any other provision of this code as it pertains to the sentencing of convicted offenders, nothing in this section is to be construed as authorizing the sentencing of convicted offenders to any of the facilities or programs mentioned herein.

(g) This section shall become operative on January 1, 1999.

SEC. 8. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 771

An act to amend Section 6366.5 of, and to add Sections 6010.50 and 6202.5 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Section 6010.50 is added to the Revenue and Taxation Code, to read:

6010.50. (a) For purposes of this part, "sale" and "purchase" do not include any transfer of an endangered or threatened animal or

plant species acquired or disposed of through a trade or exchange between nonprofit zoological societies or between a member of the American Zoo and Aquarium Association (AZA) and a nonprofit zoological society.

(b) For purposes of this section and Section 6366.5, "endangered or threatened animal or plant species" means animals or plants that are any of the following:

(1) Listed in Appendix I, II, or III to the Convention for International Trade of Endangered Species.

(2) Listed as endangered or threatened by the United States Department of the Interior, Fish and Wildlife Service.

(c) For purposes of this section and Section 6366.5, a "nonprofit zoological society" includes both of the following:

(1) A zoological society operated for charitable, educational, or scientific purposes and qualified for exemption under Section 501(c)(3) of the Internal Revenue Code.

(2) A zoological park owned or operated by a city, county, or other instrumentality of any state or foreign government.

SEC. 2. Section 6202.5 is added to the Revenue and Taxation Code, to read:

6202.5. Any retailer, other than a nonprofit zoological society as defined in subdivision (c) of Section 6010.50, that stores, uses, or otherwise consumes in this state endangered or threatened animal and plant species, as defined in subdivision (b) of Section 6010.50, acquired through a trade or exchange with a nonprofit zoological society, shall be liable for the use tax.

SEC. 3. Section 6366.5 of the Revenue and Taxation Code is amended to read:

6366.5. There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, endangered or threatened animal or plant species, as defined in subdivision (b) of Section 6010.50 if both the seller and the purchaser are nonprofit zoological societies as defined in subdivision (c) of Section 6010.50.

SEC. 4. Notwithstanding Section 2230 of the Revenue and Taxation Code no appropriation is made by this act, and the state shall not reimburse any local agency for any sales or use tax revenues lost by it under this act.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

CHAPTER 772

An act to add Section 10115.15 to the Public Contract Code, relating to state contracts.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Section 10115.15 is added to the Public Contract Code, to read:

10115.15. (a) Notwithstanding Section 10115.2, when awarding contracts for materials, supplies, or equipment, including electronic data processing goods and services, an awarding department shall accept the submission by a bidder of a minority, women, and disabled veteran business enterprise utilization plan that has been approved prior to the solicitation due date by the Department of General Services. A business utilization plan shall be considered approved by the Department of General Services as of the date submitted to the department so long as the plan meets the minimum criteria established in paragraphs (1) to (12), inclusive, and shall be valid for a period of one year, unless the department has audited the utilization plan, as authorized under subdivision (b), and disapproves it for reasons specified under subdivision (c). The decision of whether to establish a minority, women, and disabled veteran business enterprise utilization plan shall be at the option of the vendor. If a bidder cites an approved utilization plan in response to the minority, women, and disabled veteran business enterprise participation requirements of a solicitation that calls for 15 percent minority-owned, 5 percent women-owned, and 3 percent disabled veteran-owned business participation, then that utilization plan shall be considered responsive to the participation goals of the solicitation document. If a solicitation specifies higher participation goals than those in the bidder's utilization plan, the bidder shall meet the goals in the solicitation or make a good-faith effort to do so. At a minimum, the utilization plan shall include the following information:

(1) A statement of the vendor's minority, women, and disabled veteran business enterprise utilization plan, including the primary objectives of the utilization plan.

(2) An explanation showing sufficient business reasons why the vendor did not meet minority, women, and disabled veteran business enterprise participation goals set forth in the vendor's minority, women, and disabled veteran business utilization plan submitted to, and approved by, the Department of General Services in the previous year, if applicable. Further, if the vendor did not meet the minority, women, and disabled veteran business participation goals in the previous year, the vendor shall also identify remedial steps it will take to meet the goals in the current utilization plan.

(3) A statement of the vendor's minority, women, and disabled veteran business utilization goals for the succeeding year. At a minimum, these utilization goals shall be equal to the statewide participation goals set forth in subdivision (c) of Section 10115.

(4) Estimated total dollars to be subcontracted by the vendor for sales within the United States for the succeeding year.

(5) Estimated total dollars to be subcontracted by the vendor for sales within the State of California for the succeeding year.

(6) Total dollars expressed as a percentage of the amount estimated pursuant to paragraph (4), intended to be subcontracted with each of the following:

(A) Minority business enterprises.

(B) Women business enterprises.

(7) Total dollars, expressed as a percentage of the amount estimated pursuant to paragraph (5), intended to be subcontracted with disabled veteran-owned business enterprises.

(8) A representative listing of the products and services that the vendor anticipates subcontracting, including an identification of the types of subcontracting planned for minority, women, and disabled veteran business enterprises.

(9) The name of the individual employed by the vendor who will administer the vendor's utilization plan, including a description of the duties of the individual.

(10) A description of the efforts that the vendor will undertake to ensure that minority, women, and disabled veteran business enterprises will have an equitable opportunity to compete for contracts.

(11) A listing of the records and reports that the vendor will maintain to demonstrate the practices and procedures that have been adopted to comply with the requirements and goals of the utilization plan.

(12) Affirmation that the vendor met the statewide minority, women, and disabled veteran business enterprise utilization goals for the previous year, if applicable.

(b) The Department of General Services shall conduct random audits of the submitted utilization plans to determine compliance with this article, and shall retain on file all submitted utilization plans for auditing purposes. During any audit of a submitted utilization plan, the Department of General Services may ask a vendor to submit a list of all the minority, women, and disabled veteran business enterprises included as subcontractors in the vendor's plan for the previous year. This information shall remain confidential. Nothing in this section shall be construed to require the Department of General Services to audit all of the minority, women, and disabled veteran business enterprise utilization plans submitted by individual vendors. The Department of General Services may establish appropriate fees to cover the actual costs of conducting random audits and retaining on file all submitted plans.

(c) (1) At any time, the Department of General Services may

disapprove a vendor's minority, women, disabled veteran business enterprise utilization plan for any of the following reasons:

(A) The utilization plan fails to evidence a vendor's intention to comply fully with the statewide minority, women, and disabled veteran business enterprise goals for the succeeding year, as indicated by failure of the utilization plan to contain the information specified in subdivision (a).

(B) The utilization plan fails to evidence sufficient business reasons for failure to achieve the minority, women, and disabled veteran business enterprise goals set forth in a utilization plan submitted in the previous year, if applicable.

(C) The utilization plan fails to evidence sufficient remedial steps the vendor will take if the vendor did not meet the minority, women, and disabled veteran business participation goals in the previous year, if applicable.

(2) If a vendor's utilization plan is disapproved, the vendor may not submit a new utilization plan to the department for a period of one year from the date of disapproval. Prior to disapproval of a vendor's utilization plan, the vendor shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

(3) A vendor that submits a minority, women, and disabled veteran business utilization plan that is approved by the Department of General Services, and that is subsequently awarded a contract to which the vendor would not otherwise have been entitled, and who fails to evidence intention to fully comply with the minority, women, and disabled veteran business enterprise goals in the utilization plan, or fails to evidence sufficient business reasons for failing to achieve the minority, women, and disabled veteran business enterprise goals set forth in the utilization plan, shall:

(A) Pay to the state any difference between the contract amount and what the state's cost would have been if the contract had been properly awarded.

(B) In addition to the amount specified in subparagraph (A), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(C) Be ineligible to transact any business with the state for a period of not less than three months and not more than 24 months.

Prior to imposition of any sanction under this chapter, the contractor or vendor shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

CHAPTER 773

An act to amend Section 14171 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Section 14171 of the Welfare and Institutions Code is amended to read:

14171. (a) The director shall establish administrative appeal processes to review grievances or complaints arising from the findings of an audit or examination made pursuant to Sections 10722 and 14170.

(b) Different administrative appeal processes may be established by the director for grievances or complaints arising from the determinations of a tentative or final settlement based on audit or examination findings made by or on behalf of the department pursuant to Sections 10722 and 14170, except that consistent with existing practice, no administrative appeal shall be available for tentative settlement of cost reports.

(c) The administrative appeal process established by the director for final settlements, including, in the case of hospitals, the application of Sections 51536, 51537, and 51539 of Title 22 of the California Code of Regulations shall include the procedural requirements of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The impartial hearing shall be conducted by an administrative law judge appointed by the director. The director may subcontract with the Office of Administrative Hearings to conduct hearings on cases involving complicated issues of fact or law, or to reduce the backlog of cases.

(d) The administrative appeal process established by the director for tentative settlements, including, in the case of hospitals, the application of Sections 51536, 51537, and 51539 of Title 22 of the California Code of Regulations shall be an informal process which, however, guarantees a provider the right to present any grievance or complaint to the department in writing. Any subsequent hearings shall be conducted in an informal manner and shall be held at the discretion of the department.

(e) The time limitations in subdivisions (f) and (g) for the impartial hearing and the final decisions are mandatory. If the department fails to conduct the hearing or to adopt a final decision thereon within the time limitations provided in subdivisions (f) and (g), the amount of any overpayment which is ultimately determined by the department to be due shall be reduced by 10 percent for each 30-day period, or portion thereof, that the hearing or the decision, or both, are delayed beyond the time limitations provided in

subdivisions (f) and (g). However, the time period shall be extended by either of the following:

(1) Delay caused by a provider.

(2) Extensions of time granted a provider at its sole request or at the joint request of the provider and the department.

(f) (1) Notwithstanding subdivision (c), the administrative appeal process established by the director shall commence with an informal conference with the provider, a representative of the department, and the administrative law judge. The informal conference shall be conducted no later than 90 days after the filing of a timely and specific statement of disputed issues by the provider. The administrative law judge, when appropriate, may assign the administrative appeal to an informal level of review where efforts could be made to resolve facts and issues in dispute in a fair and equitable manner, subject to the requirements of state and federal law. The review conducted at this informal level shall be completed no later than 180 days after the filing of a timely and specific statement of disputed issues by the provider.

(2) Nothing in this subdivision shall prohibit the provider from presenting any unresolved grievances or complaints at an impartial hearing pursuant to subdivision (c). The impartial hearing shall be conducted no later than 300 days after the filing of a timely and specific statement of disputed issues by the provider. For noninstitutional providers, a proposed decision shall be prepared and transmitted to the director and the parties within 60 days after the closure of the record of the impartial hearing. For institutional providers, a proposed decision shall be prepared and transmitted to the director and the parties within 180 days after the closure of the record of the impartial hearing.

(3) (A) Subject to subdivision (g), a final decision in a noninstitutional provider appeal shall be adopted within 180 days after the closure of the record of the impartial hearing, and a final decision in an institutional provider appeal shall be adopted within 300 days after the closure of the record of the impartial hearing.

(B) The department shall mail a copy of the adopted decision to all parties within 30 days of the date of adoption of the decision.

(g) In the event the director intends to modify a proposed decision, on or before the 180th day following the closure of the record of the hearing for noninstitutional providers or the 300th day following the closure of the record of the hearing for institutional providers, the director shall provide written notice of his or her intention to the parties and shall afford the parties an opportunity to present oral and written argument. Following this notice, on or before the 240th day following the closure of the record of the hearing for noninstitutional providers or the 420th day following closure of the record of the hearing for institutional providers, or within that additional time period as is granted pursuant to the sole request of a provider or at the joint request of the provider and the department, the director shall issue a modified decision.

(h) In the event recovery of a disallowed payment has been made by the department, a provider who prevails in an appeal of a disallowed payment shall be entitled to interest at the rate equal to the monthly average received on investments in the Surplus Money Investment Fund, commencing on the date the appeal is formally accepted by the department or the date payment is received by the department, whichever is later.

(i) Except as provided in subdivision (j), commencing 60 days after issuance of the first statement of account status or demand for repayment resulting from an audit or examination made pursuant to Sections 10722 and 14170, interest at the rate equal to the monthly average received on investments in the Surplus Money Investment Fund during the month the first statement of account status or demand for repayment was issued shall be assessed against any unrecovered overpayment due to the department.

(j) (1) Commencing on the day following the last day of the period covered by an audit or examination made pursuant to Sections 10722 and 14170, interest at the rate established under Section 19269 of the Revenue and Taxation Code which is in effect on the date of the commencement of that interest shall be assessed against any unrecovered overpayment due to the department by providers of durable medical equipment or incontinence supplies.

(2) Interest which accrues under this subdivision for recoupment of an overpayment based on the lack of medical necessity for a previously approved claim shall commence to accrue on the date of written demand by the department.

(k) The final decision of the director shall be reviewable in accordance with Section 1094.5 of the Code of Civil Procedure within six months of the issuance of the director's final decision.

CHAPTER 774

An act to amend Section 42239 of the Education Code, relating to summer school attendance.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Section 42239 of the Education Code is amended to read:

42239. For the 1984–85 fiscal year and each fiscal year thereafter, the county superintendent shall compute an amount for each school district's summer school attendance in the following manner:

(a) Divide the amount received on account of average daily attendance pursuant to Section 42238.6 in the 1983–84 fiscal year by the 1983–84 fiscal year hours of attendance. This amount shall be

increased annually by the percentage increase granted to school districts for base revenue limit increases.

(b) Multiply the amount computed in subdivision (a) by the lesser of the 1983–84 fiscal year hours of summer school attendance or the actual fiscal year hours of summer school attendance computed pursuant to paragraph (1) of subdivision (d).

(c) If the fiscal year hours of summer school attendance computed pursuant to subdivision (d) exceed the hours of summer school attendance specified in subdivision (b), multiply the increased hours by one dollar and fifty cents ($1.50). This amount shall be increased annually by the percentage increase granted to school districts for base revenue limit increases.

(d) Commencing in the 1984–85 fiscal year, summer school attendance shall be the sum of paragraphs (1), (2), and (3):

(1) The hours of attendance in the categories identified in Section 42238.6 as it read in the 1983–84 fiscal year.

(2) Any summer school hours of attendance for mathematics, science, English as a second language, or other core academic areas designated by the Superintendent of Public Instruction.

(3) Hours of general, vocational work experience education, if the school district certifies to the Superintendent of Public Instruction that all courses identified in paragraphs (1) and (2) have been offered to meet student demand and if the statewide demand, up to the amounts specified in subdivision (e), as amended by the annual Budget Act, and the amounts specified in the appropriation made for the purposes of this section in the annual Budget Act, has been met for all courses identified in paragraphs (1) and (2). The total statewide amount apportioned for general vocational work experience summer school programs shall not exceed one hundred thousand dollars ($100,000) in any fiscal year. If the total statewide entitlement pursuant to this paragraph exceeds one hundred thousand dollars ($100,000), the State Department of Education shall apportion funds on a pro rata basis. As used in this section, reimbursement of "hours of general vocational work experience" shall be based on the number of hours of attendance for that work experience course, at a rate equal to that for a course in paragraph (2) of the same number of credits.

(e) (1) Except as otherwise provided in paragraph (3) of subdivision (d), a school district's maximum entitlement for reimbursement for pupil attendance in summer school programs offered pursuant to paragraphs (2) and (3) of subdivision (d) shall be an amount equal to 5 percent of the district's total enrollment for the prior fiscal year times 120 hours, times the hourly rate for the current fiscal year determined pursuant to subdivision (c).

(2) A district may enroll more than 5 percent of its students, or may enroll students for more than 120 hours per year in summer school programs offered pursuant to paragraphs (2) and (3) of subdivision (d), as long as the total state apportionment to the district for those programs does not exceed the amount computed

pursuant to paragraph (1). A district shall earn its entitlement at the per pupil hourly rate pursuant to subdivision (c).

(f) Notwithstanding any other provision of law, classes may be convened pursuant to this section at the hours and for the length of time during the schoolday, and at the period and for the length of time during the school year, as may be determined by the governing board of the school district.

CHAPTER 775

An act to amend Sections 5653 and 5653.9 of the Fish and Game Code, relating to dredging.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Section 5653 of the Fish and Game Code is amended to read:

5653. (a) The use of any vacuum or suction dredge equipment by any person in any river, stream, or lake of this state is prohibited, except as authorized under a permit issued to that person by the department in compliance with the regulations adopted pursuant to Section 5653.9. Before any person uses any vacuum or suction dredge equipment in any river, stream, or lake of this state, that person shall submit an application for a permit for a vacuum or suction dredge to the department, specifying the type and size of equipment to be used and other information as the department may require.

(b) Under the regulations adopted pursuant to Section 5653.9, the department shall designate waters or areas wherein vacuum or suction dredges may be used pursuant to a permit, waters or areas closed to those dredges, the maximum size of those dredges that may be used, and the time of year when those dredges may be used. If the department determines, pursuant to the regulations adopted pursuant to Section 5653.9, that the operation will not be deleterious to fish, it shall issue a permit to the applicant. If any person operates any equipment other than that authorized by the permit or conducts the operation in any waters or area or at any time that is not authorized by the permit, or if any person conducts the operation without securing the permit, the person is guilty of a misdemeanor.

(c) The department shall issue a permit upon the payment, in the case of a resident, of a base fee of twenty-five dollars ($25), as adjusted under Section 713, when an onsite investigation of the project size is not deemed necessary by the department, and a base fee of one hundred thirty dollars ($130), as adjusted under Section 713, when the department deems an onsite investigation is necessary. In the case of a nonresident, the base fee shall be one hundred dollars

($100), as adjusted under Section 713, when an onsite investigation is not deemed necessary, and a base fee of two hundred twenty dollars ($220), as adjusted under Section 713, when an onsite investigation is deemed necessary.

(d) It is unlawful to possess a vacuum or suction dredge in areas, or in or within 100 yards of waters, that are closed to the use of vacuum or suction dredges. (Amended by Stats. 1988, Ch. 1037, Sec. 1.)

SEC. 2. Section 5653.9 of the Fish and Game Code is amended to read:

5653.9. The department shall adopt regulations to carry out Section 5653 and may adopt regulations to carry out Sections 5653.3, 5653.5, and 5653.7. The regulations shall be adopted in accordance with the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code and Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

CHAPTER 776

An act to add Section 11751.8 to the Insurance Code, relating to workers' compensation.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Section 11751.8 is added to the Insurance Code, to read:

11751.8. An insurer shall report to its rating organization as corrections or revisions of losses if any of the following is applicable:

(a) A loss record detail was incorrectly reported through mistake other than error of judgment.

(b) One or more claims are declared noncompensable. A claim is declared noncompensable if any of the following applies:

(1) There is an official ruling specifically holding that a claimant is not entitled to benefits under the workers' compensation laws of the state, even though the claimant may have been awarded reimbursement for expenses incurred by the claimant in presenting the case.

(2) No claim was filed during the period of limitation provided by the workers' compensation laws for the filing of the claim, and the carrier, therefore, closes the claim.

(3) Where the carrier contends, prior to the valuation date, that a claimant is not entitled to benefits under the workers' compensation laws and the claim is officially closed because of the claimant's failure to prosecute the claim.

(c) The carrier has recovered in an action against a third party.

(d) A death claim has been compromised over the sole issue of the applicability of the workers' compensation laws of the state.

(e) The exposure has been reassigned to another classification through the revision of an audit, in which case the insurer shall file with the revision of exposure a revision of losses that will reassign all claims to the appropriate classification.

(f) A clerical error in either the classification assignment or the type of injury assignment of a given claim, or a group of claims, has been discovered by the insurer.

(g) A clerical error in either the classification assignment or the type of injury assignment of a given claim has been discovered by the rating organization. The insurer shall, when notified by the rating organization, file a revision of losses or make satisfactory explanation.

(h) A correction is made in a classification assignment of a given claim, or a group of claims, as a result of the organization test audit of an insured for which the experience has been submitted.

(i) The claim has been determined to be a joint coverage claim in accordance with paragraph 1, part F, Section II of the Unit Statistical Plan as published by the Workers' Compensation Insurance Rating Bureau of California and approved January 1, 1983. The filing shall include the information as provided for in paragraph 2, part F, Section II of the plan.

(j) The claim has closed for 60 percent or less of its highest reported incurred value.

CHAPTER 777

An act to amend Section 608 of, and to add Section 2188 to, the Elections Code, relating to voter registration.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Section 608 of the Elections Code is amended to read:

608. (a) Any application for voter registration information available pursuant to law and maintained by the Secretary of State or by the elections official of any county shall be made pursuant to this section.

(b) The application shall set forth all of the following:

(1) The printed or typed name of the applicant in full.

(2) The complete residence address and complete business address of the applicant, giving street and number. If no street or number exists, a postal mailing address as well as an adequate designation sufficient to readily ascertain the location.

(3) The telephone number of the applicant, if one exists.

(4) The number of the applicant's driver's license, state identification card, or other identification approved by the Secretary of State if the applicant does not have a driver's license or state identification card.

(5) The specific information requested.

(6) A statement of the intended use of the information requested.

(c) If the application is on behalf of a person other than the applicant, the applicant shall, in addition to the information required by subdivision (b), set forth all of the following:

(1) The name of the person, organization, company, committee, association, or group requesting the voter registration information, including their complete mailing address and telephone number.

(2) The name of the person authorizing or requesting the applicant to obtain the voter registration information.

(d) The elections official shall request the applicant to display his or her identification for purposes of verifying that identifying numbers of the identification document match those written by the applicant on the application form.

(e) The applicant shall certify to the truth and correctness of the content of the application, under penalty of perjury, with the signature of his or her name at length, including given name, middle name or initial, or initial and middle name. The applicant shall state the date and place of execution of the declaration.

(f) Completed applications for voter registration information shall be retained by the elections official for five years from the date of application.

(g) This section shall not apply to requests for information by elections officials for election purposes or by other public agencies for governmental purposes.

(h) The Secretary of State may prescribe additional information to be included in the application for voter registration information.

SEC. 2. Section 2188 is added to the Elections Code, to read:

2188. (a) Any application for voter registration information available pursuant to law and maintained by the Secretary of State or by the elections official of any county shall be made pursuant to this section.

(b) The application shall set forth all of the following:

(1) The printed or typed name of the applicant in full.

(2) The complete residence address and complete business address of the applicant, giving street and number. If no street or number exists, a postal mailing address as well as an adequate designation sufficient to readily ascertain the location.

(3) The telephone number of the applicant, if one exists.

(4) The number of the applicant's driver's license, state identification card, or other identification approved by the Secretary of State if the applicant does not have a driver's license or state identification card.

(5) The specific information requested.

(6) A statement of the intended use of the information requested.

(c) If the application is on behalf of a person other than the applicant, the applicant shall, in addition to the information required by subdivision (b), set forth all of the following:

(1) The name of the person, organization, company, committee, association, or group requesting the voter registration information, including their complete mailing address and telephone number.

(2) The name of the person authorizing or requesting the applicant to obtain the voter registration information.

(d) The elections official shall request the applicant to display his or her identification for purposes of verifying that identifying numbers of the identification document match those written by the applicant on the application form.

(e) The applicant shall certify to the truth and correctness of the content of the application, under penalty of perjury, with the signature of his or her name at length, including given name, middle name or initial, or initial and middle name. The applicant shall state the date and place of execution of the declaration.

(f) Completed applications for voter registration information shall be retained by the elections official for five years from the date of application.

(g) This section shall not apply to requests for information by elections officials for election purposes or by other public agencies for governmental purposes.

(h) The Secretary of State may prescribe additional information to be included in the application for voter registration information.

SEC. 3. Section 2 of the bill shall become operative only if this bill and SB 1547 are both chaptered, in which case Section 1 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 778

An act to add and repeal Section 1011.5 of the Military and Veterans Code, relating to veterans.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. It is the intent of the Legislature to reestablish the Governor's Commission on a Southern California Veterans Home, to allow for the expeditious completion of the recommendations for all of the remaining southern California veterans homesites. In this regard, it is the intent of the Legislature that, to the extent practicable, the commission members serving on the commission immediately preceding July 1, 1993, be reinstated as quickly as possible as members of the reestablished commission.

SEC. 2. Section 1011.5 is added to the Military and Veterans Code, to read:

1011.5. (a) There is hereby created a Governor's Commission on a Southern California Veterans Home to advise the Governor and the Legislature on the establishment, pursuant to Section 1011, of one or more veterans homes in southern California.

(b) The commission shall consist of 12 members as follows:

(1) A member of the Veterans of Foreign Wars, appointed by the Governor from a list of three names submitted by the Commander of the Veterans of Foreign Wars to the Governor.

(2) A member of the American Legion, appointed by the Governor from a list of three names submitted by the Commander of the American Legion to the Governor.

(3) A member of the Disabled American Veterans, appointed by the Governor from a list of three names submitted by the Commander of the Disabled American Veterans to the Governor.

(4) A member of the AmVets, appointed by the Governor from a list of three names submitted by the Commander of the AmVets to the Governor.

(5) Three veterans, as defined by Section 980, appointed by the Governor.

(6) The Director of Veterans Affairs or his or her designee.

(7) A veteran, as defined by Section 980, appointed by the Speaker of the Assembly.

(8) A veteran, as defined by Section 980, appointed by the Senate Committee on Rules.

(9) The following members who shall serve as ex officio, nonvoting members:

(A) The Chairperson of the Senate Committee on Veterans Affairs.

(B) The Chairperson of the Assembly Committee on

Governmental Organization.

(c) (1) In making appointments pursuant to paragraphs (1) to (4), inclusive, of subdivision (b), the Governor shall consult with the leadership of the veterans' organizations specified in those paragraphs.

(2) Notwithstanding any other provision of law, gubernatorial appointments made pursuant to subdivision (b) shall not be subject to the approval of the Senate.

(d) The Governor shall appoint one of the members of the commission to serve as chairperson. The commission shall hold meetings at times and at places as it shall determine. Each member of the commission shall receive, for each day's attendance at each meeting of the commission, a per diem of fifty dollars ($50) and shall receive the same per diem for each day spent on official duties assigned by the commission. In addition, each member shall be reimbursed for his or her necessary traveling and other expenses incurred in the performance of his or her official duties. State agencies, including those identified in subdivision (g), may pay a portion of the commission's expenses.

(e) The commission shall report annually to the Governor and Legislature its findings and recommendations on the establishment of one or more state veterans homes in southern California. The findings and recommendations may include, but need not be limited to, the following matters:

(1) Possible sites for one or more state veterans homes. This recommendation shall give consideration to the availability of federal surplus property and any property available for no cost, or at less than market value, from public or private sources, and to a competitive site-selection process which would compare the relative merits of all available sites.

(2) The scope and level of health care, residential care, and recreational facilities, and other services and amenities to be provided at each home.

(3) The number of sites to be established and the resident population to be served at each site, including a description of the type, size, and projected population of each of the residential components of the home, including, but not limited to, skilled nursing care beds, intermediate care beds, domiciliary care independent living facilities, and day care facilities.

(4) Estimates of design and planning costs, land acquisition costs, capital construction costs, and annual operating costs of each home that would be associated with various modes of construction.

(5) Financing options for the construction of each home, including, but not limited to, revenue bond financing, lease-purchase financing, and financial assistance available through the federal Veterans Administration State Home Grants Program.

(6) The management of each home by state or private administration.

(f) The commission shall also report annually to the Governor and

Legislature concerning all development and construction activities associated with the Barstow Veterans Home.

(g) State agencies, including, but not limited to, the Governor's Office of Planning and Research, the Department of Veterans Affairs, the office of State Treasurer, and the Office of Project Development and Management in the Department of General Services, may provide staff assistance to the commission upon its request.

(h) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

(i) The commission may solicit and accept private donations, through the director, from any person, association, or entity interested in veterans' benefits.

CHAPTER 779

An act to add Chapter 8.1 (commencing with Section 11810) to Part 1 of Division 3 of Title 2 of the Government Code, relating to state agencies and departments, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Chapter 8.1 (commencing with Section 11810) is added to Part 1 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 8.1. STATE GOVERNMENT STRATEGIC PLANNING AND PERFORMANCE REVIEW ACT

Article 1. General Provisions

11810. This chapter shall be known, and may be cited, as the State Government Strategic Planning and Performance and Review Act.

Article 2. Findings and Declarations

11813. The Legislature finds and declares the following:

(a) Waste and inefficiency in state government undermine the confidence of Californians in government and reduces the state government's ability to adequately address vital public needs.

(b) State government, in many instances, is a morass of bureaucratic red tape and regulations that ultimately stifle economic revitalization and further alienate the people the agencies were

created to serve.

(c) Legislative policymaking, spending decisions, and program oversight are seriously handicapped by insufficient attention to program performance and results.

(d) Many of the basic components of performance-based government are missing from day-to-day operations in state government. These include strategic planning, performance measurement, management information systems, performance budget contracts, and management flexibility.

(e) The tremendous success of performance reviews in Texas and other states serve as excellent performance-based models of government for California state government.

(f) A performance review of California state government could identify ways to reduce state spending through more efficient and effective operations and programs, without reducing services to residents.

(g) A performance review of California state government could challenge and question the basic assumptions underlying all state agencies and the programs and services offered by the state in order to identify those that are vital to the best interests of the people of the state and those that no longer meet that goal.

(h) The Legislature authorized implementation of performance budgeting pilot projects in Chapter 641 of the Statutes of 1993, which added Chapter 8 (commencing with Section 11800).

(i) Strategic planning is a prerequisite for effective performance reviews and effective performance budgeting.

Article 3. Strategic Planning and Performance Reviews

11815. (a) By March 1, 1995, and by each March 1 thereafter, the Department of Finance, after consultation with the Bureau of State Audits and the Legislative Analyst, shall do both of the following:

(1) Conduct a survey of all state agencies, departments, offices, and commissions, except for the University of California or agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution. This survey shall determine:

(A) Which agencies, departments, offices, and commissions have completed strategic plans.

(B) The dates on which those plans were completed or last revised.

(C) Which agencies, departments, offices, and commissions have not completed strategic plans.

(2) Identify those agencies, departments, offices, and commissions for which the Department of Finance recommends the development or updating of a strategic plan.

(b) The Department of Finance shall report the results of the survey and recommendation required by subdivision (a) to the Governor and to the Joint Legislative Budget Committee by March 1, 1995, and by each March 1 thereafter.

11816. Each agency, department, office, or commission for which strategic planning efforts are recommended pursuant to Section 11815 shall develop a strategic plan and shall report to the Governor and to the Joint Legislative Budget Committee by April 1, 1995, and by each April 1 thereafter on the steps being taken to develop and adopt a strategic plan. This report shall include a description of the elements to be included in the strategic plan, the process for developing and adopting the strategic plan, and a timetable for the plan's completion. In developing its strategic plan each agency, department, office, or commission shall consult with at least the following affected parties: employee organizations, the Legislature, client groups served, suppliers, and contractors. The report shall also identify the steps being taken to develop performance measures that could be used for a performance budgeting system or a performance review.

11817. It is the intent of the Legislature that strategic plans developed pursuant to Section 11816 form the basis for conducting performance reviews pursuant to this article or for the implementation of performance budgeting systems pursuant to Chapter 8 (commencing with Section 11800).

11818. By March 1, 1996, and by each March 1 thereafter, the Department of Finance, after consultation with the Controller, the Bureau of State Audits, and the Legislative Analyst, shall recommend to the Governor, and to the Joint Legislative Budget Committee a plan for conducting performance reviews for agencies, departments, offices, and commissions that have completed strategic plans pursuant to this article. This report shall also report the current status of any performance reviews previously authorized by the Legislature.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to promote efficiency and economy in state government, and assist in alleviating serious, recurring fiscal problems facing the State of California, it is necessary that this act take effect immediately.

CHAPTER 780

An act to add Article 8.5 (commencing with Section 65460) to Chapter 3 of Division 1 of Title 7 of the Government Code, and to add Section 33334.19 to the Health and Safety Code, relating to land use.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Article 8.5 (commencing with Section 65460) is added to Chapter 3 of Division 1 of Title 7 of the Government Code, to read:

Article 8.5. Transit Village Development Planning Act of 1994

65460. This act shall be known, and may be cited, as the Transit Village Development Planning Act of 1994.

65460.1. The Legislature hereby finds and declares all of the following:

(a) Federal, state, and local governments in California are investing in new and expanded rail transit systems in areas throughout the state, including Los Angeles County, the San Francisco Bay area, San Diego County, Santa Clara County, and Sacramento County.

(b) This public investment in rail transit is unrivaled in the state's history and represents well over ten billion dollars ($10,000,000,000) in planned investment alone.

(c) Recent studies of transit ridership in California indicate that persons who live within a quarter-mile radius of rail transit stations utilize the transit system in far greater numbers than does the general public living elsewhere.

(d) The use of transit by persons living near rail transit stations is particularly important given the decline of transit ridership in California between 1980 and 1990. Transit's share of commute trips dropped in all California metropolitan areas—greater Los Angeles: 5.4 percent to 4.8 percent; San Francisco Bay area: 11.9 percent to 10.0 percent; San Diego: 3.7 percent to 3.6 percent; Sacramento: 3.7 percent to 2.5 percent.

(e) Only a few rail transit stations in California have any concentration of housing proximate to the station.

(f) Interest in clustering housing and commercial development around rail transit stations, called transit villages, has gained momentum in recent years.

65460.2. A city or county may prepare a transit village plan for a transit village development district that addresses the following characteristics:

(a) A neighborhood centered around a transit station that is planned and designed so that residents, workers, shoppers, and others find it convenient and attractive to patronize transit.

(b) A mix of housing types, including apartments, within not less than a quarter mile of the exterior boundary of the parcel on which the transit station is located.

(c) Other land uses, including a retail district oriented to the transit station and civic uses, including day care centers and libraries.

(d) Pedestrian and bicycle access to the transit station, with attractively designed and landscaped pathways.

(e) A rail transit system that should encourage and facilitate intermodal service, and access by modes other than single occupant vehicles.

(f) Demonstrable public benefits beyond the increase in transit usage, including all of the following:

(1) Relief of traffic congestion.

(2) Improved air quality.

(3) Increased transit revenue yields.

(4) Increased stock of affordable housing.

(5) Redevelopment of depressed and marginal inner-city neighborhoods.

(6) Live-travel options for transit-needy groups.

(7) Promotion of infill development and preservation of natural resources.

(8) Promotion of a safe, attractive, pedestrian-friendly environment around transit stations.

(9) Reduction of the need for additional travel by providing for the sale of goods and services at transit stations.

(10) Promotion of job opportunities.

(11) Improved cost-effectiveness through the use of the existing infrastructure.

(12) Increased sales and property tax revenue.

(13) Reduction in energy consumption.

(g) Sites where a density bonus of at least 25 percent may be granted pursuant to specified performance standards.

(h) Other provisions that may be necessary, based on the report prepared pursuant to subdivision (b) of Section 14045.

65460.3. To increase transit ridership and to reduce vehicle traffic on the highways, local, regional, and state plans should direct new development close to the transit stations. These entities should provide financial incentives to implement these plans.

65460.4. A transit village development district shall include all land within not less than a quarter mile of the exterior boundary of the parcel on which is located a rail transit station designated by the legislative body of a city, county, or city and county that has jurisdiction over the station area.

For purposes of this article, "district" means a transit village development district as defined in this section.

65460.5. A city or county establishing a district and preparing a

plan pursuant to this article shall:

(a) Be eligible for available transportation funding.

(b) Receive assistance from the Office of Permit Assistance, pursuant to Section 15399.53, in establishing an expedited permit process pursuant to Section 15399.50, at the request of the city or county.

65460.6. An agency responsible for the preparation and adoption of the congestion management program may exclude district impacts from the determination of conformance with level of service standards pursuant to subdivision (c) of Section 65089.3.

65460.7. (a) A transit village plan shall be prepared, adopted, and amended in the same manner as a general plan.

(b) A transit village plan may be repealed in the same manner as it is required to be amended.

65460.8. No transit village plan may be adopted or amended unless the proposed plan or amendment is consistent with the general plan.

65460.9. No local public works project may be approved, no tentative map or parcel map for which a tentative map was not required may be approved, and no zoning ordinance may be adopted or amended within an area covered by a transit village plan unless it is consistent with the adopted transit village plan.

65460.10. A city, county, or city and county may require a developer to enter into a development agreement pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4 to implement a density bonus specified in the transit village plan pursuant to subdivision (g) of Section 65460.2.

SEC. 2. Section 33334.19 is added to the Health and Safety Code, to read:

33334.19. (a) Notwithstanding Section 33670 or any other provision of this division, an agency may increase, improve, and preserve the supply of low- and moderate-income housing located within a transit village plan adopted pursuant to the Transit Village Development Planning Act of 1994, Article 8.5 (commencing with Section 65460) of Chapter 3 of Division 1 of Title 7 of the Government Code, and is within its territorial limits but outside of a project area. In the event that the agency seeks to comply with any of its obligations under Section 33413 under a transit village plan, it shall provide two units outside of a project area, both of which shall be at the same level of affordability as, and otherwise comply with, all requirements pertaining to the unit that would otherwise have been available inside a project area.

(b) To implement subdivision (a), an agency may increase, improve, and preserve the supply of low- and moderate-income housing which is located within a transit village plan with funds from the Low and Moderate Income Housing Fund. In using these funds, the agency shall comply with all requirements of the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code).

(c) To implement subdivision (a), notwithstanding subdivision (a) of Section 33670, an agency may determine the location and character of any residential construction which is located within a transit village plan and which is to be financed pursuant to Chapter 8 (commencing with Section 33750) and may make mortgage or construction loans to participating parties through qualified mortgage lenders, or purchase mortgage or construction loans without premium made by qualified mortgage lenders to participating parties, for financing residential construction of multifamily rental units located within a transit village plan.

(d) Expenditures from the Low and Moderate Income Housing Fund pursuant to this section shall be deemed to be part of the agency's redevelopment plans, as if those redevelopment plans had been amended to include those expenditures, and the agency is not required to comply with Article 12 (commencing with Section 33450). The Legislature hereby deems those expenditures to benefit the agency's project areas.

CHAPTER 781

An act to add Section 43702 to the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. (a) The Legislature hereby finds that diesel fuel regulations adopted by the State Air Resources Board have resulted in changes to the historical patterns of the manufacture, transportation, distribution, and end use of diesel fuel within California. The changes in the composition of diesel fuel mandated by the new state regulations have caused widespread public concern.

(b) It is the intent of the Legislature that the state board shall not adopt any changes in the standard for the formulation of diesel fuel or for the formulation of equivalent diesel fuels, as that standard existed on January 1, 1994, unless the state board finds that an alternative diesel fuel formula meets or exceeds the emission performance standards of diesel fuel that is formulated to that standard.

(c) It is further the intent of the Legislature in enacting this act to provide a means to reimburse owners of diesel engines for damage associated with the diesel fuel mandated by the state board.

SEC. 2. Section 43702 is added to the Health and Safety Code, to read:

43702. (a) Any revenues received by the state board from any

variance fees imposed upon manufacturers who receive a variance from the standards for the content of diesel fuel adopted by the state board, which apply on and after October 1, 1993, shall be deposited in the Diesel Fuel Trust Fund, which is hereby created in the State Treasury. The money in the trust fund may be expended only upon appropriation by the Legislature in accordance with subdivisions (b) and (c).

(b) The money in the Diesel Fuel Trust Fund shall be expended to reimburse owners of diesel fuel-powered engines and diesel fuel-powered equipment for damage to fuel injection system elastomer components which can be established as the result of the use of the diesel fuel and which is damage that is not the responsibility of the manufacturer.

(c) The state board shall develop and implement, by November 30, 1994, a reimbursement program to include all of the following:

(1) An application for reimbursement claims, to be submitted to the state board, that requires documentation that supports a claim of damage to diesel fuel injection system elastomer components. The documentation shall consist of repair records from an authorized engine repair business or fleet repair facility which verify that diesel fuel injection system elastomer component damage occurred on and after September 1, 1993, and that the failure occurred as the result of diesel fuel which met the standards for the content of diesel fuel adopted by the state board, which applied on and after October 1, 1993.

(2) Claimants shall demonstrate evidence of ownership of a vehicle or equipment for which damage is claimed by providing copies of ownership records.

(3) Claimants with valid claims shall be reimbursed for the cost of repairs up to a maximum amount for each of the following two classes of vehicle or equipment, as follows:

(A) Owners of light-duty vehicles, small marine engines, and stationary units, including, but not limited to, utility engines, compressors, pumps, and generators, shall be reimbursed for damage not exceeding four hundred fifty dollars ($450) for each claim.

(B) Owners of heavy-duty onroad vehicles and offroad agricultural and construction equipment shall be reimbursed for damage not exceeding five hundred fifty dollars ($550) for each claim.

(4) Claimants shall be limited to one claim for each vehicle or equipment unit.

(5) The state board shall develop an audit component within the reimbursement program to identify fraudulent claims.

(6) All applications for claims shall be postmarked not later than midnight, March 1, 1995. Applications arriving after that deadline are invalid and shall be returned to the sender.

(7) The state board shall not pay any claims until all claims have been reviewed and the state board can make a reasonable estimate of the total amount of valid claims. If the amount exceeds the amount

of money in the Diesel Fuel Trust Fund, reimbursement for valid claims shall be prorated in each class specified in paragraph (3).

(8) The state board shall give notice of the reimbursement program by publication in major newspapers of general circulation in the state. That notice shall fully describe the reimbursement program, including, but not limited to, the limits of reimbursement and the possible proration of claims in the event that valid claims exceed the amount of money in the Diesel Fuel Trust Fund.

(9) The state board may expend an amount not to exceed three hundred thousand dollars ($300,000) from the Diesel Fuel Trust Fund to administer the reimbursement program.

(10) The state board may contract with a private mediation firm to review and adjudicate claims.

(11) The state board may adopt guidelines for administrating the reimbursement program after providing adequate opportunity for public review and comment. Guidelines adopted by the state board pursuant to this paragraph shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) The Legislature hereby finds and declares that the reimbursement program shall not be considered to be mitigation for the impacts of the standards adopted by the state board for the formulation of diesel fuel, and by the enactment of this section, the state is not thereby assuming any responsibility for mitigating impacts on operators of diesel vehicles or equipment arising from the implementation of the standards. The Legislature further finds and declares that the reimbursement program is a proper use of public funds and serves a necessary public purpose.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to avoid further harm to diesel fuel-powered vehicles and diesel fuel-powered equipment, and to alleviate at the earliest possible date the economic hardship to the owners of those vehicles and that equipment, it is necessary that this act take effect immediately.

CHAPTER 782

An act to amend Sections 3159 and 3162 of the Civil Code, relating to construction lenders.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Section 3159 of the Civil Code is amended to read:

3159. (a) Any of the persons named in Sections 3110, 3111, and 3112 may, prior to the expiration of the period within which his or her claim of lien must be recorded under Chapter 2 (commencing with Section 3109), give to a construction lender a stop notice or a bonded stop notice. The construction lender shall be subject to the following:

(1) The construction lender shall withhold funds pursuant to a bonded stop notice filed by an original contractor, regardless of whether a payment bond has previously been recorded in the office of the county recorder where the site is located in accordance with Section 3235.

(2) The construction lender shall withhold funds pursuant to a bonded stop notice filed by any other person named in Sections 3110, 3111, and 3112, unless a payment bond has previously been recorded in the office of the county recorder where the site is located in accordance with Section 3235. If a payment bond has previously been recorded, the construction lender may, at its option, withhold funds pursuant to the bonded stop notice or stop notice, or may elect not to withhold pursuant to the bonded stop notice or stop notice given by anyone other than an original contractor.

(3) If, when giving the construction lender the stop notice or bonded stop notice, the claimant makes a written request for notice of the election, accompanied by a preaddressed, stamped envelope, the construction lender shall furnish the claimant a copy of the bond within 30 days after making the election. A lender shall not be liable for a failure to furnish a copy of the bond if the failure was not intentional and resulted from a bona fide error, if the lender maintains reasonable procedures to avoid such an error, and if the error was corrected not later than 20 days from the date on which the violation was discovered. The payment bond may be recorded at any time prior to the serving of the first stop notice. The notice may only be given for materials, equipment, or services furnished, or labor performed.

(b) In the case of a stop notice or bonded stop notice filed by the original contractor or by a subcontractor, the original contractor or subcontractor shall only be entitled to recover on his or her stop notice or bonded stop notice the net amount due the original contractor or subcontractor after deducting the stop notice claims of

all subcontractors or material suppliers who have filed bonded stop notices on account of work done on behalf of the original contractor or the subcontractor.

(c) In no event shall the construction lender be required to withhold, pursuant to a bonded stop notice, more than the net amount identified in subdivision (b). Notwithstanding any other provision, no construction lender shall have any liability for the failure to withhold more than this net amount upon receipt of a bonded stop notice.

SEC. 2. Section 3162 of the Civil Code is amended to read:

3162. (a) Upon receipt of a stop notice pursuant to Section 3159, the construction lender may, and upon receipt of a bonded stop notice the construction lender shall, except as provided in this section, withhold from the borrower or other person to whom it or the owner may be obligated to make payments or advancement out of the construction fund, sufficient money to answer the claim and any claim of lien that may be recorded therefor. The construction lender shall be subject to the following:

(1) The construction lender shall withhold funds pursuant to a bonded stop notice filed by an original contractor, regardless of whether a payment bond has previously been recorded in the office of the county recorder where the site is located in accordance with Section 3235.

(2) The construction lender shall withhold funds pursuant to a bonded stop notice filed by any other person named in Sections 3110, 3111, and 3112, unless a payment bond has previously been recorded in the office of the county recorder where the site is located in accordance with Section 3235. If a payment bond has previously been recorded, the construction lender may, at its option, withhold funds pursuant to the bonded stop notice or stop notice, or may elect not to withhold pursuant to the bonded stop notice or stop notice given by anyone other than an original contractor.

(3) If, when giving the construction lender the stop notice or bonded stop notice, the claimant makes a written request for notice of the election, accompanied by a preaddressed, stamped envelope, the construction lender shall furnish the claimant a copy of the bond within 30 days after making the election. A lender shall not be liable for a failure to furnish a copy of the bond if the failure was not intentional and resulted from a bona fide error, if the lender maintains reasonable procedures to avoid such an error, and if the error was corrected not later than 20 days from the date on which the violation was discovered. The payment bond may be recorded at any time prior to the serving of the first stop notice.

(b) In the case of a stop notice or bonded stop notice filed by the original contractor or by a subcontractor, the original contractor or subcontractor shall only be entitled to recover on his or her stop notice or bonded stop notice the net amount due the original contractor or subcontractor after deducting the stop notice claims of all subcontractors or material suppliers who have filed bonded stop

notices on account of work done on behalf of the original contractor or the subcontractor.

(c) In no event shall the construction lender be required to withhold, pursuant to a bonded stop notice, more than the net amount identified in subdivision (b). Notwithstanding any other provision, no construction lender shall have any liability for the failure to withhold more than this net amount upon receipt of a bonded stop notice.

CHAPTER 783

An act to amend Section 7030 of the Business and Professions Code, relating to contractors, and making an appropriation therefor.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Section 7030 of the Business and Professions Code is amended to read:

7030. (a) Every person licensed pursuant to this chapter shall include the following statement in at least 10-point type on all written contracts with respect to which the person is a prime contractor:

"Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint is filed within three years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826."

(b) (1) A contractor, who has been disciplined two or more times within a 10-year period, shall disclose either in capital letters in 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type, in a document provided prior to entering into a contract to perform work on residential property with four or fewer units, any citation, license suspension, or license revocation during the last four years resulting from any violation of any provisions of this chapter by the contractor, or any complaint or legal action relating to conduct regulated under this chapter that resulted in an unfavorable judgment against the contractor.

(2) A contractor shall provide in a document provided prior to entering into a contract to perform work on residential property with four or fewer units, the following notice:

"STATE LAW REQUIRES ANYONE WHO CONTRACTS TO DO CONSTRUCTION WORK TO BE LICENSED BY THE

CONTRACTORS' STATE LICENSE BOARD IN THE LICENSE CATEGORY IN WHICH THE CONTRACTOR IS GOING TO BE WORKING—IF THE TOTAL PRICE OF THE JOB IS $300 OR MORE (INCLUDING LABOR AND MATERIALS).

LICENSED CONTRACTORS ARE REGULATED BY LAWS DESIGNED TO PROTECT THE PUBLIC. IF YOU CONTRACT WITH SOMEONE WHO DOES NOT HAVE A LICENSE, THE CONTRACTORS' STATE LICENSE BOARD MAY BE UNABLE TO ASSIST YOU WITH A COMPLAINT. YOUR ONLY REMEDY AGAINST AN UNLICENSED CONTRACTOR MAY BE IN CIVIL COURT, AND YOU MAY BE LIABLE FOR DAMAGES ARISING OUT OF ANY INJURIES TO THE CONTRACTOR OR HIS OR HER EMPLOYEES.

YOU MAY CONTACT THE CONTRACTORS' STATE LICENSE BOARD TO FIND OUT IF THIS CONTRACTOR HAS A VALID LICENSE. THE BOARD HAS COMPLETE INFORMATION ON THE HISTORY OF LICENSED CONTRACTORS, INCLUDING ANY POSSIBLE SUSPENSIONS, REVOCATIONS, JUDGMENTS, AND CITATIONS. THE BOARD HAS OFFICES THROUGHOUT CALIFORNIA. PLEASE CHECK THE GOVERNMENT PAGES OF THE WHITE PAGES FOR THE OFFICE NEAREST YOU OR CALL 1-800-321-CSLB FOR MORE INFORMATION."

This notice shall be set out either in capital letters in 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type.

(3) A contractor shall provide the disclosure and notice required by this subdivision to any person with whom he or she is contracting to perform work on residential property with four or fewer units. The disclosure and notice may be provided in a bid, estimate, or other document prior to entering into a contract.

(4) A violation of this subdivision is subject to the following penalties:

(A) A first violation shall be subject to a penalty of one thousand dollars ($1,000).

(B) A second violation shall be subject to a penalty of two thousand five hundred dollars ($2,500).

(C) A third violation shall be subject to a penalty of five thousand dollars ($5,000) and a one-year suspension of license.

(D) A fourth violation shall be subject to revocation of license.

(5) For purposes of this subdivision, "discipline" means a decision of the registrar resulting in the suspension or revocation of a license pursuant to an accusation whether or not the discipline has been stayed, or a citation issued pursuant to Section 7099 which has become a final order of the registrar.

CHAPTER 784

An act to add Section 8317 to the Government Code, relating to state agencies.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Section 8317 is added to the Government Code, to read:

8317. (a) Each state agency, as defined in subdivision (b), shall establish and maintain an index of the names or titles of all fees, license fees, fines, and penalties administered or collected by the agency.

(b) "State agency" for the purposes of this section means every state office, department, division, bureau, board, and commission, but shall not include the Legislature or any entity provided for under Article VI of the California Constitution.

(c) This section does not apply to any fee collected by a state agency from any other governmental agency.

CHAPTER 785

An act to amend Sections 14010, 14020, 14022, 14023, 14024, 14025, 14026, 14027, 14028, 14034, 14037.7, 14039, 14040, 14041, 14043, 14046, 14061, 14065, 14066, 14070, 14071.5, 14075, 14085, 14086, 14090, 14096, and 14099 of, to amend and repeal Section 14037.6 of, to add Section 14030.2 to, and to repeal Section 14063 of, the Corporations Code, and to amend Sections 8684.2 and 15385 of the Government Code, relating to corporations, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Section 14010 of the Corporations Code is amended to read:

14010. Unless the context otherwise requires, the definitions in this section govern the construction of this part.

(a) "Corporation" or "the corporation" means any nonprofit California small business development corporation created pursuant to this part.

(b) "Financial institution" means banking organizations including national banks and trust companies authorized to conduct

business in California and state-chartered commercial banks, trust companies, and savings and loan associations.

(c) "Financial company" means banking organizations including national banks and trust companies, savings and loan associations, state insurance companies, mutual insurance companies, and other banking, lending, retirement, and insurance organizations.

(d) "Expansion Fund" means the Small Business Expansion Fund.

(e) "Corporate fund" means the Small Business Development Corporation Loan Guarantee Fund.

(f) "Loan Account" means the Small Business Development Loan Guarantee Account.

(g) Unless otherwise defined by the board by regulation, "small business loan" means a loan to a business defined as an eligible small business as set forth in Section 121.3-10 of Part 121 of Chapter 1 of Title 13 of the Code of Federal Regulations, including those businesses organized for agricultural purposes that create or retain employment as a result of the loan. From time to time, the director, in consultation with the board, shall provide guidelines as to the preferred ratio of jobs created or retained to total funds borrowed for guidance to the corporations.

(h) "Employment incentive loan" means a loan to a qualified business, as defined in subdivision (h) of Section 7082 of the Government Code, or to a business located within an enterprise zone, as defined in subdivision (b) of Section 7072 of the Government Code.

(i) "Loan committee" means a committee appointed by the board of directors of a corporation to determine the course of action on a loan application pursuant to Section 14060.

(j) "Board of directors" means the board of directors of the corporation.

(k) "OSB" or "office" means the Office of Small Business.

(*l*) "Board" means the Small Business Development Board.

(m) "Agency" means the Trade and Commerce Agency.

(n) "Director" means the Executive Director of the Office of Small Business.

(o) "Secretary" means the Secretary of Trade and Commerce.

SEC. 2. Section 14020 of the Corporations Code is amended to read:

14020. There is in the agency a Small Business Development Board.

SEC. 3. Section 14022 of the Corporations Code is amended to read:

14022. The board shall do each of the following:

(a) Advise the director on matters regarding this part.

(b) Adopt regulations for the purposes of this part, as proposed by the director, including regulations for the supervision and suspension of the corporations created herein.

(c) Select a vice chairperson of the board and adopt bylaws as are required to govern the conduct and operation of the board.

(d) Approve new corporations recommended by the director, based on an examination of each of the following:

(1) Review of the articles of incorporation and bylaws of the corporation to determine whether they contain the provisions required by this chapter and conform with the regulations adopted pursuant to this part.

(2) Determination as to whether the legislative intent expressed in Section 14002 shall be served by the proposed corporation.

(3) Determination as to whether the responsibility, character, and general fitness of the individuals who will manage the corporation are such as to command the confidence of the state and to warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter and that they include representatives of the financial and business community, as well as the economically disadvantaged.

(e) Review and approve the yearly contracts between the corporations and OSB.

(f) Recommend to the director the appointment of advisory groups necessary to carry out the powers and duties of the agency.

(g) Hold public hearings in order to carry out the objectives of the agency in regards to its responsibilities as legislative advocate and ombudsman for the state's small business community.

(h) Solicit nominees and recommend to the Governor candidates for the position of director.

(i) Advise the Governor, the director, and the Small Business Advocate regarding issues and programs affecting California's small business community, including, but not limited to, business innovation and expansion, export financing, state procurement, management and technical assistance, venture capital, and financial assistance.

SEC. 4. Section 14023 of the Corporations Code is amended to read:

14023. The public members of the board may, at the discretion of the agency, be reimbursed per diem and travel expenses pursuant to state law.

SEC. 5. Section 14024 of the Corporations Code is amended to read:

14024. The agency shall adopt regulations concerning the implementation of this chapter and direct lending as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except for regulations concerning the implementation of Section 14070, which the board shall adopt as emergency regulations. The adoption of these regulations is an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare within the meaning of subdivision (b) of Section 11346.1 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall not

remain in effect for more than 180 days unless the agency complies with all provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code. This section also applies to any direct loan program administered by the agency.

SEC. 6. Section 14025 of the Corporations Code is amended to read:

14025. The director, as provided for in Section 15335.07 of the Government Code, shall do all of the following:

(a) Administer this part.

(b) In accordance with program resources, stimulate the formation of corporations and the use of branch offices for the purposes of making this program accessible to all areas of the state.

(c) Expeditiously approve or disapprove the articles of incorporation and any subsequent amendments to the articles of incorporation of a corporation.

(d) Require each corporation to submit an annual written plan of operation in the form and containing the information as the board may require by regulation or otherwise.

(e) Review reports from the State Banking Department and inform corporations as to what corrective action is required.

(f) Examine, or cause to be examined, at any reasonable time, all books, records, and documents of every kind, and the physical properties of a corporation. The inspection shall include the right to make copies, extracts, and search records.

SEC. 7. Section 14026 of the Corporations Code is amended to read:

14026. The director, following notification to the secretary, may do all of the following:

(a) Upon approval by the board, contract for services entered into pursuant to this chapter.

(b) Hold public hearings.

(c) Act as liaison between corporations formed under this part, other state and federal agencies, lenders, and the Legislature.

(d) Process and tabulate on a monthly basis all corporate reports.

(e) Attend monthly board meetings.

(f) Attend and participate at corporation meetings. The director, or his or her designee, shall be an ex officio, nonvoting representative on the board of directors and loan committees of each corporation.

(g) Assist corporations in applying for federal grant applications, and in obtaining program support from the business community.

SEC. 8. Section 14027 of the Corporations Code is amended to read:

14027. The director shall have the accounts of each corporation formed under this part audited as of the close of business on June 30, of each year. The director shall also have the portfolio of each corporation audited a minimum of once a year. Material audit exceptions that are not corrected by the corporation within a

reasonable period of time may result in the suspension of the corporation pursuant to Section 14028.

SEC. 9. Section 14028 of the Corporations Code is amended to read:

14028. (a) Upon a finding by the director that irreparable harm may occur if guarantee authority is not temporarily withdrawn from a corporation, the director may temporarily withdraw guarantee authority from a corporation. As used in this section, "guarantee authority" means the authority to make or guarantee any loan that encumbers funds in a corporate fund or the expansion fund. The director shall call an emergency board meeting within 10 working days following the effective date of the temporary withdrawal, at which the board shall make one of the determinations specified in subdivision (c). The corporation's yearly contract shall remain in effect during the period of temporary withdrawal, and the corporation shall continue to receive reimbursement of necessary operating expenses.

(b) Failure of a corporation to substantially comply with the following may result in the suspension of a corporation:

(1) Regulations implementing the Small Business Development Corporation Law.

(2) The plan of operation specified in subdivision (d) of Section 14025.

(3) Fiscal and portfolio requirements, as contained in the fiscal and portfolio audits specified in Section 14027.

(4) Milestones and scope of work as contained in the annual contract between the corporation and the agency.

(c) The director, upon a finding that a corporation has failed to comply with the requirements specified in subdivision (b), may recommend to the board the suspension of a corporation. The determinations that may be made by the board are to do the following:

(1) Disapprove the requested suspension.

(2) Disapprove the requested suspension subject to the corporation's adoption of a specified remedial action plan.

(3) Temporarily withdraw, or continue to withdraw, guarantee authority until a specified time. This determination by the board requires a finding that the corporation has failed to comply with the Small Business Development Corporation Law.

(4) Suspend the corporation, effective immediately.

(5) Suspend the corporation, with suspension stayed until the corporation provides a remedial action plan to the board, and the board decides whether to repeal or implement the stayed suspension. The determinations contained in paragraphs (4) and (5) require a finding that irreparable harm will occur unless the corporation is suspended. Except as described in Section 14029, a decision by the board to suspend a corporation is final and without administrative appeal.

(d) In considering a determination regarding the recommended

suspension and possible remedial action plans, the board shall consider, along with other criteria as specified in subdivision (b), the extent to which the corporation has generally complied with the intent of this chapter, including the legislative intent expressed in Section 14002.

(e) If the board votes to suspend a corporation, the director shall transfer all funds, whether encumbered or not, in the corporate account of the suspended corporation into either the expansion fund or temporarily transfer the funds to another corporation.

(f) Following suspension, the corporation may continue its existence as a nonprofit corporation pursuant to the Nonprofit Public Benefit Corporation Law, Part 2 (commencing with Section 5110) of Division 2, but shall no longer be registered with the Secretary of State as a small business development corporation. A corporation shall not enjoy any of the benefits of a small business development corporation following suspension.

(g) The funds in the corporate fund of a corporation under temporary withdrawal shall be transferred to the expansion fund. Upon termination of the temporary withdrawal, unless the termination is caused by suspension, the funds of the corporation that were transferred to the expansion fund from the corporate fund shall be returned to the corporation's corporate fund, notwithstanding Section 14037. While the funds of a corporation's corporate fund reside in the expansion fund, use of the principal on the funds shall be governed by the implementing regulations specifying use of funds in the expansion fund. Interest on the funds moved from a corporation's corporate fund upon temporary withdrawal shall be limited to payment of the corporation's administrative expenses, as contained in the contract between the corporation and the agency.

SEC. 11. Section 14030.2 is added to the Corporations Code, to read:

14030.2. (a) The director, with the approval of the board, may establish accounts within the expansion fund for loan guarantees and surety bond guarantees, including loan loss reserves. Each account is a legally separate account, and shall not be used to satisfy loan or surety bond guarantees or other obligations of another corporation. The director shall recommend, for approval by the board, whether the expansion fund and corporate fund accounts are to be leveraged, and if so, by how much.

(b) Annually, not later than January 1 of each year commencing January 1, 1996, the director shall prepare a report regarding the loss experience for the expansion fund for loan guarantees and surety bond guarantees. At a minimum, the report shall also include data regarding numbers of surety bond and loan guarantees awarded through the expansion fund, including ethnicity and gender data of participating contractors and other entities, and experience of surety insurer participants in the bond guarantee program. The director shall submit that report to the secretary of the Trade and Commerce Agency for transmission to the Governor and the Legislature.

SEC. 12. Section 14034 of the Corporations Code is amended to read:

14034. The director at his or her discretion, with the approval of the Director of Finance, may request the Treasurer to invest those funds in the expansion fund and the corporate fund that are not immediately encumbered by administrative or program costs, in securities issued by the Treasury of the United States government. Returns from these investments shall be deposited in the expansion fund and shall be used to support the programs of this part.

SEC. 13. Section 14037.6 of the Corporations Code is amended to read:

14037.6. (a) The Director of Finance, with the approval of the Governor, may transfer moneys in the Special Fund for Economic Uncertainties to the Small Business Expansion Fund for use by the Office of Small Business in the Trade and Commerce Agency, in an amount necessary to make loan guarantees pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code.

(b) The Governor should utilize this authority to prevent business insolvencies and loss of employment in an area affected by a state of emergency that began in the Los Angeles area on April 29, 1992, and incidents subsequent thereto, and resulting therefrom, throughout the state and declared a disaster by the President of the United States, or by the Administrator of the United States' Small Business Administration, or by the Governor of California.

(c) This section shall remain in effect until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 14. Section 14037.7 of the Corporations Code is amended to read:

14037.7. Within 60 days of the conclusion of the period for guaranteeing loans under any small business disaster loan guarantee program conducted for a disaster as authorized by Section 8684.2 of the Government Code or Section 14075, the agency shall provide a report to the Legislature on loan guarantees approved and rejected by gender, ethnic group, type of business and location, and each participating loan institution.

SEC. 15. Section 14039 of the Corporations Code is amended to read:

14039. Pursuant to this section and the regulations, the state has residual interest in the funds deposited by the state to a corporate fund and to the return on these funds from investments. On dissolution or suspension of the corporation, these funds shall be withdrawn by the director from the corporate account and returned to the expansion fund or temporarily transferred to another corporate fund. This provision shall be contained in the trust instructions to the trustee.

SEC. 16. Section 14040 of the Corporations Code is amended to read:

14040. Each corporate fund shall consist of a loan guarantee account, and, if approved by the board upon recommendation by the director, a bond guarantee account, each of which is a legally separate account, and the assets of one account shall not be used to satisfy loan guarantees or other obligations of another corporation. Not more than one-third of a corporate fund shall be allocated to a bond guarantee account. No corporation shall use corporate funds to secure a corporate indebtedness. Corporate funds are state funds and, with the exception of guarantees established pursuant to this chapter, shall not be subject to liens or encumbrances of the corporation or its creditors.

SEC. 17. Section 14041 of the Corporations Code is amended to read:

14041. (a) Except as provided in subdivisions (c) and (d) of Section 14070, the funds within the expansion fund, including the corporate funds and loan accounts, shall be used solely to make loans, guarantee bonds, and guarantee loans, approved by the corporation, that meet the California Small Business Development Corporation Law loan criteria. The state shall not be liable or obligated in any way as a result of the allocation of state money to a corporate fund beyond the state money that is allocated and deposited in the fund pursuant to this chapter, and that is not otherwise withdrawn by the state pursuant to this chapter.

(b) A summary of all loans and bonds to which a state guarantee is attached shall be submitted to the director upon execution of the loan agreement and periodically thereafter.

(c) A summary of all loans made by a corporation shall be submitted to the director upon execution of the loan agreement and periodically thereafter.

SEC. 18. Section 14043 of the Corporations Code is amended to read:

14043. The corporation shall not deposit any of its funds in any financial institution unless the financial institution has been designated as a depository by a vote of the majority of all of the directors of the corporations with corporate funds, exclusive of any director who is an officer or director of the institution so designated. The financial institution that is to act as trustee of the corporate fund shall be designated after review by the board and a vote of the majority of all the corporations with corporate funds. The corporation shall not receive money on deposit.

SEC. 19. Section 14046 of the Corporations Code is amended to read:

14046. If the board recommends acceptance upon the basis of the facts disclosed by the investigation provided by subdivision (d) of Section 14022 and finds that the proposed incorporation meets all the requirements of this chapter, the director shall approve the articles of incorporation and endorse the approval thereon and forward the same to the Secretary of State for his or her approval and filing. Likewise, the board shall recommend approval or disapproval of all

amendments to the articles. The director shall endorse the approval on the amendatory document before the document is forwarded to the Secretary of State for his or her approval and filing.

SEC. 20. Section 14061 of the Corporations Code is amended to read:

14061. Every corporation shall provide for and maintain a central staff to perform all administrative requirements of the corporation including all those functions required of a corporation by the board and the director.

SEC. 21. Section 14063 of the Corporations Code is repealed.

SEC. 22. Section 14065 of the Corporations Code is amended to read:

14065. The corporations shall report to the director, or his or her designated representative, all statistical and other reports required by this part, responses to audit reports, budget requirements, invoices submitted for payment by the state, and information concerning loans made or guaranteed.

SEC. 23. Section 14066 of the Corporations Code is amended to read:

14066. The corporation shall make a report to the board, as of the close of business on June 30, of each year describing the corporation's activities and any additional information requested by the director, on or before August 1 of each year.

SEC. 24. Section 14070 of the Corporations Code is amended to read:

14070. (a) The corporate guarantee shall be backed by funds on deposit in the corporation's corporate fund and the expansion fund established pursuant to Section 14040.

(b) Loan guarantees shall be secured by a reserve of at least 25 percent to be determined by the director with the approval of the board.

(c) The expansion fund and corporate accounts shall be used exclusively to guarantee obligations and pay the administrative costs of the corporations. A corporation located in a rural area may utilize the funds for direct lending to farmers as long as at least 90 percent of the corporate fund farm loans, calculated by dollar amount, and all expansion fund farm loans are guaranteed by the United States Farmers Home Administration. The amount of funds available for direct farm lending shall be determined by the executive director. In its capacity as a direct lender, the corporation may sell in the secondary market the guaranteed portion of each loan so as to raise additional funds for direct lending. The agency, in consultation with the board, shall issue regulations governing these direct loans, including the maximum amount of these loans.

(d) In furtherance of the purposes of this part, up to one-half of the corporate funds may be used to guarantee loans utilized to establish a Business and Industrial Development Corporation (BIDCO) under Division 15 (commencing with Section 33000) of the Financial Code.

(e) To execute the direct loan programs established in this chapter, the office may loan trust funds to a corporation located in a rural area for the express purpose of lending those funds to an identified borrower. The loan by the office to the corporation shall be on terms similar to the loan between the corporation and the borrower. The amount of the loan may be in excess of the amount of a loan to any individual farm borrower, but actual disbursements pursuant to the office loan agreement shall be required to be supported by a loan agreement between the farm borrower and the corporation in an amount at least equal to the requested disbursement. The loan between the office and the corporation shall be evidenced by a credit agreement. In the event that any loan between the corporation and borrower is not guaranteed by a governmental agency, the portion of the credit agreement attributable to that loan shall be secured by assignment of any note, executed in favor of the corporation by the borrower to the office. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower, which shall be collateralized by the note between the corporation and the borrower. In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the office is limited to the repayment received by the corporation from the borrower except in a case where the Farmers Home Administration requires exposure by the corporation in rule or regulation. The corporation may use trust funds for loan repayment to the office if the corporation has exhausted a loan loss reserve created for this purpose. Interest and principal received by the office from the corporation shall be deposited into the same account from which the funds were originally borrowed.

(f) Upon the approval of the director, a corporation shall be authorized to borrow trust funds from the office for the purpose of relending those funds to small businesses. A corporation shall demonstrate to the director that it has the capacity to administer a direct loan program, and has procedures in place to limit the default rate for loans to startup businesses. Not more than 25 percent of any trust fund shall be used for the direct lending established pursuant to this subdivision. A loan to a corporation shall not exceed the amount of funds likely to be lent to small businesses within three months following the loan to the corporation. The maximum loan amount to a small business is fifty thousand dollars ($50,000). In the absence of fraud on the part of the corporation, the repayment obligation pursuant to the loan to the corporation shall be limited to the amount of funds received by the corporation for the loan to the small business and any other funds received from the office that are not disbursed. The corporation shall be authorized to charge a fee to the small business borrower, in an amount determined by the office pursuant to regulation. The program provided for in this subdivision shall be available in all geographic areas of the state.

SEC. 25. Section 14071.5 of the Corporations Code is amended to

read:

14071.5. In addition to the authority granted by Section 14071, upon approval of the director, a corporation may act as guarantor on a surety bond for any small business contractor, including, but not limited to, women, minority, and disabled veteran contractors.

The provisions of this section allowing a corporation to act as a guarantor on surety bonds may be funded through appropriate federal funding sources. Federal funds shall be deposited in the Federal Trust Fund in the State Treasury in accordance with Section 16360 of the Government Code, for transfer to the Small Business Expansion Fund, as created by Section 14030 of the Corporations Code.

SEC. 26. Section 14075 of the Corporations Code is amended to read:

14075. (a) A corporation may, in an area designated as a disaster area by the Governor, provide loan guarantees from funds allocated in Section 14037.5 to small businesses, small farms, nurseries, and agriculture-related enterprises that have suffered actual physical damage or significant economic injury as a result of the disaster.

(b) The agency may adopt regulations to implement the loan guarantee program authorized by this section. The agency may adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, and for purposes of that chapter, including Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed within 180 days after their effective date unless the agency complies with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, as provided in subdivision (e) of Section 11346.1 of the Government Code.

(c) Allocations pursuant to subdivision (a) shall be deemed to be for extraordinary emergency or disaster response operations costs incurred by the office.

SEC. 27. Section 14085 of the Corporations Code is amended to read:

14085. It shall be unlawful for the director or any person who is an officer, director, or employee of a corporation, or who is a member of a loan committee, or who is a member of the board or employee of the office to:

(a) Ask for, consent, or agree to receive, any commission, emolument, gratuity, money, property, or thing of value for his or her own use, benefit, or personal advantage, for procuring or endeavoring to procure for any person, partnership, joint venture, association, or corporation, any loan, guarantee, financial, or other assistance from any corporation.

(b) Borrow money, property, or to benefit knowingly, directly or

indirectly, from the use of the money, credit, or property of any corporation.

(c) Make, maintain, or attempt to make or maintain, a deposit of the funds of a corporation with any other corporation or association on condition, or with the understanding, expressed or implied, that the corporation or association receiving the deposit shall pay any money or make a loan or advance, directly or indirectly, to any person, partnership, joint venture, association, or corporation, other than to a corporation formed under this part.

SEC. 28. Section 14086 of the Corporations Code is amended to read:

14086. It shall be unlawful for the director or any member of a corporation, or any person who is an officer or director, or who is a member or employee of the office or the board or director, to purchase or receive, or to be otherwise interested in the purchase or receipt, directly or indirectly, of any asset of a corporation, without paying to the corporation the fair market value of the asset at the time of the transaction.

SEC. 29. Section 14090 of the Corporations Code is amended to read:

14090. (a) Corporations shall give high priority to the issuance of loan guarantees to small business incubators, and to businesses that lease space in incubators.

(b) For the purposes of this section, "incubator" means a facility that allows new small businesses to increase their probability of success by sharing needed capital equipment, services, and facilities, which may include, but are not limited to, the following:

(1) Reception and meeting area.

(2) Secretarial services (i.e., collating, telephone answering, mailhandling).

(3) Accounting and bookkeeping services.

(4) Research libraries.

(5) Onsite financial and management counseling.

(6) Parking.

(7) Flexible lease arrangements for flexible space.

(8) Computer/word processing facilities.

(9) Day care facilities.

(10) Office furniture rentals.

(11) A graduation policy sometimes requiring firms to leave after three to five years in a subsidized, nurturing environment.

(12) Employee training and placement services.

SEC. 30. Section 14096 of the Corporations Code is amended to read:

14096. There is hereby created in the State Treasury as part of the California Economic Development Grant and Loan Fund created pursuant to Section 15327 of the Government Code, the Hazardous Waste Reduction Loan Account, for the sole purpose of receiving state, federal, or local government money, and other public or private money for expenditure by the agency for the purposes of this

article. The funds deposited in the Hazardous Waste Reduction Loan Account are hereby continuously appropriated to the agency, notwithstanding Section 13340 of the Government Code. The state is not liable or obligated beyond the state money which is allocated and deposited in the Hazardous Waste Reduction Loan Account and is appropriated for these purposes.

SEC. 31. Section 14099 of the Corporations Code is amended to read:

14099. The State Department of Toxic Substances and the agency shall publicize and promote the availability of loan assistance pursuant to this article.

SEC. 32. Section 8684.2 of the Government Code is amended to read:

8684.2. (a) It is the intent of the Legislature:

(1) To provide the Governor with appropriate emergency powers in order to enable utilization of available emergency funding to provide guarantees for interim loans to be made by lending institutions, in connection with relief provided for those persons affected by natural disasters or a state of emergency in affected areas during periods of disaster relief assistance, for the purpose of supplying interim financing to enable small businesses to continue operations pending receipt of federal disaster assistance.

(2) That the Governor should utilize this authority to prevent business insolvencies and loss of employment in areas affected by these disasters.

(b) In addition to the allocations authorized by Section 8683 and the loan guarantee provisions of Section 14030.1 of the Corporations Code, the Governor may allocate funds made available for the purposes of this chapter, in connection with relief provided, in affected areas during the period of federal disaster relief, to the Small Business Expansion Fund for use by the Office of Small Business, pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, to provide guarantees for low-interest interim loans to be made by lending institutions for the purpose of providing interim financing to enable small businesses that have suffered actual physical damage or significant economic losses, as a result of the natural disaster or state of emergency for which funding under this section is made available, to continue or resume operations pending receipt of loans made or guaranteed by the federal Small Business Administration. The maximum amount of any loan guarantee funded under this paragraph shall not exceed two hundred thousand dollars ($200,000). Each loan guarantee shall not exceed 95 percent of the loan amount, except that a loan guarantee may be for 100 percent of the loan amount if the applicant can demonstrate that access to business records pertinent to the loan application has been precluded by official action prohibiting necessary reentry into the affected business premises or that those business records pertinent to the loan application have been destroyed. The term of the loan shall be determined by the lending

institution providing the loan or shall be made payable on the date the proceeds of a loan made or guaranteed by the federal Small Business Administration with respect to the same damage or loss are made available to the borrower, whichever event first occurs.

(c) Loan guarantees for which the initial 12-month term has expired and for which an application for disaster assistance funding from the federal Small Business Administration is still pending may be extended until the Small Business Administration has reached a final decision on the application. Applications for interim loans shall be processed in an expeditious manner. Wherever possible, lending institutions shall fund nonconstruction loans within 60 calendar days of application. Loan guarantees for loans that have been denied funding by the federal Small Business Administration, may be extended by the financial institution provided that the loan is for no longer than a maximum of seven years, if the business demonstrates the ability to repay the loan with an extended loan term, and a new credit analysis is provided. All loans extended under this provision shall be repaid in installments of principal and interest, and be fully amortized over the term of the loan. Nothing in this section shall preclude the lender from charging reasonable administrative fees in connection with the loan.

(d) Allocations pursuant to this section shall, for purposes of all provisions of law, be deemed to be for extraordinary emergency or disaster response operation costs, as provided in Section 8690.6, incurred by the Office of Small Business.

(e) The Trade and Commerce Agency may adopt regulations to implement the loan guarantee program authorized by this section. The agency may adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, and for purposes of that chapter, including Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed within 180 days after their effective date unless the agency complies with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, as provided in subdivision (e) of Section 11346.1 of the Government Code.

(f) Within 60 days of the conclusion of the period for guaranteeing loans under any small business disaster loan guarantee program conducted for a disaster as authorized by Section 8684.2 of the Government Code or Section 14075, the agency shall provide a report to the Legislature on loan guarantees approved and rejected by gender, ethnic group, type of business and location, and each participating loan institution.

SEC. 33. Section 15385 of the Government Code is amended to read:

15385. (a) SBDC grants shall be awarded by the agency on a

three-year cycle.

All grantees shall be required to provide a minimum cash match of the total grant as specified in the SBDC plan. The percentage of cash match required shall be a minimum of 5 percent in the first year, not to exceed 25 percent in the third year.

(b) Extension of grants to the second and third years shall be based on the SBDC successfully meeting performance milestones during the previous funded year, as outlined in their grant contract.

(c) Grantees may be funded for successive three-year terms by negotiated agreements between the agency and the grantee, at the sole discretion of the agency, based upon grantees' prior performances. However, those grantees shall be required to provide a minimum of 15 percent cash match of the total grant amount each year during an extended grant cycle.

(d) In order to reduce cost to the state, the agency may pursue funds from the federal Small Business Administration SBDC program.

(e) SBDCs may institute a policy for charging reasonable fees for services.

(f) SBDCs shall be required to submit quarterly progress reports to the agency.

(g) The agency may review and approve the expenditures of funds to ensure conformity with the provisions and intent of this chapter.

SEC. 34. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement, through appropriate fund controls, Chapter 997 of the Statutes of 1992, which authorized small business development corporations to act as a guarantor, it is necessary for this act to take effect immediately.

CHAPTER 786

An act to amend Section 46009 of the Food and Agricultural Code, and to amend Sections 26569.22, 26569.29, and 26569.30 of, and to amend, repeal, and add Section 27831 of, the Health and Safety Code, relating to food.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Section 46009 of the Food and Agricultural Code is amended to read:

46009. (a) Effective January 1, 1993, a nongovernmental

certification organization that certifies raw agricultural commodities, eggs, meat, fowl, or dairy products sold as organic shall register with the secretary and shall thereafter annually renew the registration, unless the organization is no longer engaged in the activities requiring the registration. Registration shall be on a form provided by the secretary, shall include the filing of a certification plan as specified in Section 26569.33 of the Health and Safety Code, and payment of the fee specified in subdivision (b). The registration form shall contain the names of all persons involved in making certification decisions or setting certification standards for the certification organization. The secretary shall reject a registration submission that is incomplete or not in compliance with this chapter and Article 4.5 (commencing with Section 26569.20) of Chapter 5 of Division 21 of the Health and Safety Code. The secretary shall make forms available for this purpose.

In lieu of registration pursuant to this subdivision, the secretary may approve a certification organization that is accredited under the federal organic foods law.

(b) Each nongovernmental certification organization shall pay an annual registration fee of five hundred dollars ($500) to the secretary. Any registration submitted by a certification organization, registered with the department, shall be made available to the public for inspection and copying. The secretary may audit the organization's certification procedures and records at any time, but any records of the certification organization not otherwise required to be disclosed shall be kept confidential by the secretary.

(c) The secretary and the county agricultural commissioners under the supervision of the secretary shall, if requested by a sufficient number of persons to cover the costs of the program in a county as determined by the secretary, establish a voluntary certification program for producers of organic food and processors of organic meat, fowl, and dairy products under the enforcement jurisdiction of the secretary. This program shall meet all of the requirements of Sections 26569.31 to 26569.34, inclusive, of the Health and Safety Code. In addition, this program shall meet all of the requirements of the federal certification program, including federal accreditation. The secretary shall establish a fee schedule for participants in this program that covers all of the department's reasonable costs of the program. A county agricultural commissioner that conducts a voluntary certification program pursuant to this section shall establish a fee schedule for participants in this program which covers all of the agricultural commissioner's reasonable costs of the program. The secretary may not expend funds obtained from registration fees collected under this chapter for the purposes of adopting or administering this program.

The certification fee authorized by this subdivision is due and payable on or before the 10th day of the month following the month in which the decision to grant the certification is issued. Any person who does not pay the amount that is due within the required period

shall pay the enforcement authority providing the certificate a penalty of 10 percent of the total amount determined to be due, plus interest at the rate of 1½ percent interest per month on the unpaid balance.

(d) This chapter applies to all food sold as organic within the state, wherever produced, handled, or processed, and to all food produced, handled, or processed in the state, wherever sold as organic, except that in lieu of registration under this chapter, the secretary may recognize a certification organization operating outside of the state that certifies raw agricultural commodities, eggs, meat, fowl, or dairy products if the secretary determines that the organization meets minimum standards substantially similar to those contained in subdivision (c) of Section 26569.30, and Sections 26569.32 to 26569.34, inclusive, of the Health and Safety Code. The secretary shall establish, administratively, a procedure for organizations to apply and obtain recognition.

SEC. 2. Section 26569.22 of the Health and Safety Code is amended to read:

26569.22. Except as otherwise provided in this article, no food shall be sold as organic unless it consists entirely of any of the following:

(a) Raw agricultural commodities that meet the following requirements:

(1) The commodity has been produced and handled without any prohibited material or color additive having been applied, and without irradiation.

(2) In the case of any raw agricultural commodity produced from seed, the seed has not been treated with any prohibited material. If untreated seed is not available, seed treated with a fungicide may be used, except for seed used for sprouts, as described in paragraph (6).

(3) Prior to January 1, 1995, in the case of perennial crops, no prohibited material shall have been applied to the crop, field, management unit, or area where the commodity is grown for 12 months prior to the appearance of flower buds. During the 1995 calendar year, in the case of perennial crops, no prohibited material shall have been applied to the crop, field, management unit, or area where the commodity is grown for 24 months prior to harvest. Commencing January 1, 1996, in the case of perennial crops, no prohibited material shall have been applied to the crop, field, management unit, or area where the commodity is grown for 36 months prior to harvest.

(4) Prior to January 1, 1995, in the case of annual or two-year crops, no prohibited material shall have been applied to the field, management unit, or area where the commodity is grown for 12 months prior to seed planting or transplanting. During the 1995 calendar year, in the case of annual or two-year crops, no prohibited material shall have been applied to the crop, field, management unit, or area where the commodity is grown for 24 months prior to harvest. Commencing January 1, 1996, in the case of annual or two-year crops,

no prohibited material shall have been applied to the crop, field, management unit, or area where the commodity is grown for 36 months prior to harvest.

(5) In the case of any raw agricultural commodity that is grown in any growing medium, such as fungi grown in compost or transplants grown in potting mix:

(A) The growing medium must have been manufactured or produced:

(i) Without any prohibited material having been included in the medium.

(ii) Without any prohibited material having been applied to the area where the medium is manufactured or produced during seeding or inoculation of the medium.

(iii) Using methods that will minimize the migration or accumulation of any pesticide chemical residue in food grown in the medium.

(B) No prohibited material shall have been applied to the area where the commodity is grown during seeding or inoculation. If a prohibited material is applied in the area prior to seeding or inoculation, a residue test shall be performed on the commodity grown from that seeding or inoculation.

(6) In the case of any raw agricultural commodity that is grown directly from seed and harvested within 18 days of germination, including, by way of example, sprouts, no prohibited material shall have been applied to the seed, and no prohibited material shall have been applied to the area where the commodity is grown after introduction of the seed. After January 1, 1992, the seed shall have been produced, handled, and processed in accordance with this article.

(b) Processed food manufactured only from raw agricultural commodities as described in subdivision (a), except as follows:

(1) Water, air, and salt may be added to the processed food.

(2) Ingredients other than raw agricultural commodities as described in subdivision (a) may be added to the processed food if these ingredients are included in the national list adopted by the United States Secretary of Agriculture pursuant to Section 6517 of the federal Organic Foods Production Act (7 U.S.C. Sec. 6501 et seq.) and do not represent more than 5 percent of the weight of the total finished product, excluding salt and water.

(c) Processed food manufactured only from a combination of raw agricultural commodities as described in subdivision (a) and processed food as described in subdivision (b).

(d) Meat, fowl, fish, dairy products, or eggs that are produced, distributed, and processed without any prohibited material having been applied or administered.

SEC. 3. Section 26569.29 of the Health and Safety Code is amended to read:

26569.29. (a) Notwithstanding any other provision of law, any producer, handler, processor, or retailer of food sold as organic shall

immediately make available for inspection by, and shall upon request, within 72 hours of the request, provide a copy to, the director, the Attorney General, any prosecuting attorney, any governmental agency responsible for enforcing laws related to the production or handling of food sold as organic, or the Secretary of Food and Agriculture of any record required to be kept under this section for purposes of carrying out this article and Chapter 10 (commencing with Section 46000) of Division 17 of the Food and Agricultural Code. Records acquired pursuant to this subdivision shall not be public records as that term is defined in Section 6252 of the Government Code and shall not be subject to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(b) Upon written request of any person that establishes cause for the request, the director and the Secretary of Food and Agriculture shall obtain and provide to the requesting party within 10 working days of the request a copy of any of the following records required to be kept under this article that pertain to a specific product sold or offered for sale, and that identify substances applied, administered, or added to that product, except that financial information about an operation or transaction, information regarding the quantity of a substance administered or applied, the date of each administration or application, information regarding the identity of suppliers or customers, and the quantity or price of supplies purchased or products sold shall be removed before disclosure and shall not be released to any person other than persons and agencies authorized to acquire records under subdivision (a):

(1) Records of a producer, as described in paragraph (1) of subdivision (a) and in paragraph (3) of subdivision (b) of Section 26569.28.

(2) Records of a handler, as described in paragraphs (4) and (5) of subdivision (c) of Section 26569.28, records of previous handlers, if any, and producers as described in paragraph (1) of subdivision (a) of, paragraph (3) of subdivision (b) of, and paragraphs (4) and (5) of subdivision (c) of, Section 26569.28, without identifying the previous handlers or producers, and, if applicable, records obtained as required in subdivision (d).

(3) Records of a processor, as described in paragraph (4) of subdivision (d) of Section 26569.28, except for processing aids that are not residual in the product and spices and seasonings exempt from labeling requirements in Parts 145 and 146 of Title 21 of the Code of Federal Regulation, records of previous processors and handlers, if any, and producers as described in paragraph (1) of subdivision (a) of, paragraph (3) of subdivision (b) of, paragraphs (4) and (5) of subdivision (c) of, and paragraph (4) of subdivision (d) of, Section 26569.28, without identifying the previous processors, handlers, or producers, and, if applicable, records obtained as required in subdivision (d).

(4) Records of a retailer, as described in paragraphs (4) and (5)

of subdivision (e) of Section 26569.28, records of previous processors and handlers, if any, and producers as described in paragraph (1) of subdivision (a) of, paragraph (3) of subdivision (b) of, paragraphs (4) and (5) of subdivision (c), and paragraph (4) of subdivision (d) of, Section 26569.28, without identifying the previous processors, handlers, or producers, and, if applicable, records obtained as required in subdivision (d).

This subdivision shall be the exclusive means of public access to records required to be kept by producers, processors, handlers, and retailers under this article.

A person required to provide records pursuant to a request under this subdivision, may petition the director or the Secretary of Food and Agriculture to deny the request based on a finding that the request is of a frivolous or harassing nature. The secretary or director may, upon the issuance of such a finding, waive the information production requirements of this subdivision for the specific request for information that was the subject of the petition.

(c) Information specified in subdivision (b) that is required to be released upon request shall not be considered a "trade secret" under Section 26235, Section 1060 of the Evidence Code, or the Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code).

(d) The director or the Secretary of Food and Agriculture may charge the person requesting records a reasonable fee to reimburse him or her self or the source of the records for the cost of reproducing the records requested.

(e) Any person who first imports into this state, for resale, food sold as organic shall obtain and provide to the enforcement authority, upon request, proof that the products being sold have been certified by an accredited certifying organization or have otherwise been produced in compliance with this article.

(f) The director shall not be required to obtain records not in his or her possession in response to a subpoena. Prior to releasing records required to be kept pursuant to this chapter in response to a subpoena, the director shall delete any information regarding the identity of suppliers or customers and the quantity or price of supplies purchased or products sold.

SEC. 4. Section 26569.30 of the Health and Safety Code is amended to read:

26569.30. (a) Commencing January 1, 1996, all organic products shall be certified by a registered certifying organization, and food shall be sold as organic only in accordance with this section, subdivisions (c) and (d) of Section 26569.24, Sections 26569.31 to 26569.34, inclusive, and Section 46009 of the Food and Agricultural Code. The Secretary of Food and Agriculture, director, and the county agricultural commissioners shall carry out this subdivision to the extent that adequate funds are made available for that purpose.

(b) Food sold as organic may be certified only by a certification organization registered pursuant to subdivisions (c) and (d), by the

director pursuant to subdivision (f), by a certification organization registered pursuant to Section 46009 of the Food and Agricultural Code, or by the Secretary of Food and Agriculture or a county agricultural commissioner pursuant to Section 46009 of the Food and Agricultural Code or a federally accredited certification organization.

(c) In order to be registered, a certification organization shall meet all of the following minimum qualifications:

(1) Be the certification organization for at least five legally separate and distinct, financially unrelated, and independently controlled persons involved in the production or processing of food sold as organic.

(2) Be a legally separate and distinct entity from any person whose food is certified by the organization. A certification organization shall be considered legally separate and distinct notwithstanding the fact that persons or representatives of persons whose food is certified serve as directors, officers, or in other capacities for the certification organization, so long as those persons or representatives of those persons do not exercise decisionmaking authority over certification of that particular food.

(3) Have no financial interest in the sale of the food, except that fees charged by the certification organization to cover the reasonable costs of operating the certification organization do not constitute a financial interest for purposes of this section.

(d) Effective January 1, 1992, a certification organization which certifies processed food sold as organic, except for processed meat, fowl, or dairy products, shall register with the director and shall thereafter annually renew the registration unless no longer engaged in the activities requiring the registration. Registration shall be on a form provided by the director, shall include the filing of a certification plan as specified in Section 26569.33 and payment of the fee specified in subdivision (f). The director shall make forms available for this purpose on or before December 1, 1993. The registration form shall include a written statement affirming compliance with all requirements for certification organizations specified in Section 26569.30 to 26569.34, inclusive, and confirmation that each component of the organization's certification plan has been filed as specified in Section 26569.33. The director shall reject a registration submission that is incomplete or not in compliance with this article.

(e) Commencing July 31, 1991, the director may, upon the request of a sufficient number of persons to fund the program's cost, establish and maintain a certification program for processors of food sold as organic and shall establish and collect a fee from all processors of food certified under that program to cover all of the department's costs of administering the program. The certification program shall be subject to all provisions regarding certification organizations contained in this article, except that the requirements of subdivisions (c) and (d) shall not apply, and the program shall meet all of the

requirements for federal certification programs, including federal accreditation.

(f) The registration fee shall be five hundred dollars ($500), unless the certification organization is also registered as a certifier of producers by the Secretary of Food and Agriculture under Section 46009 of the Food and Agricultural Code, in which case the registration fee shall be one hundred dollars ($100).

(g) The director may audit the organization's certification procedures and records at any time. Records of certification organizations not otherwise required to be released upon request or made publicly available shall not be released by the director except to other employees of the department, the Department of Food and Agriculture, a county agricultural commissioner, the Attorney General, any prosecuting attorney, or any government agency responsible for enforcing laws related to the activities of the person subject to this division.

SEC. 5. Section 27831 of the Health and Safety Code is amended to read:

27831. Certified farmers' markets shall meet the provisions of Article 6 (commencing with Section 27590) and, in addition, shall meet all of the following requirements:

(a) All food shall be stored at least 15 centimeters (6 inches) off the floor or ground or under any other conditions which are approved.

(b) Food preparation is prohibited at certified farmers' markets with the exception of the food samples. Distribution of food samples is allowed provided that the following sanitary conditions exist:

(1) Samples shall be kept in approved, clean, covered containers.

(2) All food samples shall be distributed by the producer in a sanitary manner.

(3) Clean, disposable plastic gloves shall be used when cutting food samples.

(4) Food intended for sampling shall be washed, or cleaned in another manner, of any soil or other material by potable water in order that it is wholesome and safe for consumption.

(5) Potable water shall be available for hand washing and sanitizing as approved by the local enforcement agency.

(6) Potentially hazardous food samples shall be maintained at or below 45 degrees fahrenheit. All other food samples shall be disposed of within two hours after cutting.

(7) Utensil and hand washing water shall be disposed of in a facility connected to the public sewer system or in a manner approved by the local enforcement agency.

(8) Utensils and cutting surfaces shall be smooth, nonabsorbent, and easily cleaned or disposed of as approved by the local environmental health agency.

(c) Approved toilet and hand washing facilities shall be available within 60 meters (200 feet) of the premises of the certified farmers' market or as approved by the enforcement officer.

(d) No live animals, birds, or fowl shall be kept or allowed within 6 meters (20 feet) of any area where food is stored or held for sale. This subdivision does not apply to guide dogs, signal dogs, or service dogs when used in the manner specified in Section 54.1 of the Civil Code.

(e) All garbage and rubbish shall be stored, and disposed of, in a manner approved by the enforcement officer.

(f) Notwithstanding Article 11 (commencing with Section 27670), vendors selling food adjacent to and under the jurisdiction and management of a certified farmers' market may store, display, and sell from a table or display fixture apart from the vehicle, in a manner approved by the local enforcement agency.

(g) This section shall be repealed on January 1, 1997.

SEC. 6. Section 27831 is added to the Health and Safety Code, to read:

27831. Certified farmers' markets shall meet the provisions of Article 6 (commencing with Section 27590) and, in addition, shall meet all of the following requirements:

(a) All food shall be stored at least 15 centimeters (6 inches) off the floor or ground or under any other conditions which are approved.

(b) Food preparation is prohibited.

(c) Approved toilet and hand washing facilities shall be available within 60 meters (200 feet) of the premises of the certified farmers' market or as approved by the enforcement officer.

(d) No live animals, birds, or fowl shall be kept or allowed within 6 meters (20 feet) of any area where food is stored or held for sale. This subdivision does not apply to guide dogs, signal dogs, or service dogs when used in the manner specified in Section 54.1 of the Civil Code.

(e) All garbage and rubbish shall be stored, and disposed of, in a manner approved by the enforcement officer.

(f) This section shall become operative on January 1, 1997.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, for certain costs, no reimbursement is required by this act from the State Mandates Claims Fund because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2

of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 787

An act to add Article 4 (commencing with Section 19335) to Chapter 7 of Part 11 of the Education Code, relating to the State Librarian, and making an appropriation therefor.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.

I am deleting the $50,000 appropriation from the General Fund contained in Senate Bill 1993.

This bill requires the State Librarian to establish and administer the Reading Initiative Program. As part of the program the State Librarian must compile a list of recommended books for pupils in K-12 and develop a program of rewards and related recognition activities for pupils who participate and succeed in the program. The program's purpose is to promote recreational reading by children.

Because of the fiscal condition of the State and limited state resources, funding for the program should be limited to the use of private donations and to the extent possible, accommodated within existing resources. For these reasons, I am deleting the proposed $50,000 appropriation from the General Fund.

PETE WILSON, Governor

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

SECTION 1. Article 4 (commencing with Section 19335) is added to Chapter 7 of Part 11 of the Education Code, to read:

Article 4. Reading Initiative Program

19335. This act shall be known and may be cited as the Reading Initiative Program.

19336. The State Librarian shall establish the Reading Initiative Program with funds appropriated for that purpose and with funds received from private sources. The State Librarian shall administer the program and shall have the following duties:

(a) Developing a list of recommended books, in consultation with various groups, including, but not limited to, teachers, librarians, parents, writers, publishers, and employees of the State Department of Education. The recommended books shall supplement the state-recommended English/language arts curriculum framework, and shall include recreational reading selections for children.

(b) Developing a method of involving pupils enrolled in kindergarten and grades 1 to 12, inclusive, in the program and an

appropriate form of recognition for participating pupils who volunteer to participate in the program and who succeed in the program. Rewards and related recognition activities shall be funded with amounts received from private sources.

(c) To the extent private funds are available, and consistent with subdivision (b), private funds received by the State Librarian for the purposes of this article shall be expended to obtain and make available to the public the books on the list developed pursuant to subdivision (a) of Section 19336.

SEC. 2. The sum of fifty thousand dollars ($50,000) is hereby appropriated to the State Librarian from the General Fund for the 1994–95 fiscal year for the purposes of administering the Reading Initiative Program (Art. 4 (commencing with Sec. 19335), Ch. 7, Pt. 11, Ed. C.).

CHAPTER 788

An act to add and repeal Section 199.717 of the Health and Safety Code, relating to AIDS.

[Approved by Governor September 24, 1994. Filed with Secretary of State September 26, 1994.]

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

SECTION 1. Section 199.717 is added to the Health and Safety Code, immediately following Section 199.716, to read:

199.717. (a) The State Department of Health Services shall develop and implement, with the assistance of other state agencies, a pilot project to provide a model women's HIV early intervention center. The Office of AIDS, within the department, shall designate areas of the state in which to implement this pilot project. The selection shall be based on observed HIV and AIDS trends among women. At a minimum, two pilot sites shall be established . Los Angeles County and the Alameda/Contra Costa County area shall be considered as possible sites for the pilot project. The women's HIV early intervention centers shall be linked to, or located with, AIDS outpatient treatment clinics and clinics providing a full range of women's health services.

(b) Women's HIV early intervention services shall include, but not be limited to, medical monitoring, laboratory tests, colposcopy, mammography, HIV-related obstetrical and gynecological services, psychosocial support, HIV transmission risk assessment, risk reduction counseling and support, health education, nutritional counseling, assistance with clinical drug trials, alcohol and substance abuse treatment, and child care.

(c) It is the intent of the Legislature that funding for implementation of this pilot project be provided from funds

allocated to the Office of AIDS within the State Department of Health Services for early intervention for the prevention of HIV and AIDS among women, subject to appropriation in the Budget Act of 1994.

(d) The state department shall develop and implement this pilot project on or before July 1, 1995.

(e) This section shall become inoperative on June 30, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 789

An act to amend Section 213 of the Penal Code, relating to robbery.

[Approved by Governor September 25, 1994. Filed with Secretary of State September 27, 1994.]

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

SECTION 1. Section 213 of the Penal Code is amended to read:

213. (a) Robbery is punishable as follows:

(1) Robbery of the first degree is punishable as follows:

(A) If the defendant, voluntarily acting in concert with two or more other persons, commits the robbery within an inhabited dwelling house, a vessel as defined in Section 21 of the Harbors and Navigation Code, which is inhabited and designed for habitation, an inhabited floating home as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, a trailer coach as defined in the Vehicle Code, which is inhabited, or the inhabited portion of any other building, by imprisonment in the state prison for three, six, or nine years.

(B) In all cases other than that specified in subparagraph (A), by imprisonment in the state prison for three, four, or six years.

(2) Robbery of the second degree is punishable by imprisonment in the state prison for two, three, or five years.

(b) Notwithstanding Section 664, attempted robbery in violation of paragraph (2) of subdivision (a) is punishable by imprisonment in the state prison.

CHAPTER 790

An act to amend Sections 18358.15 and 18358.30 of the Welfare and Institutions Code, relating to children's services.

[Approved by Governor September 25, 1994. Filed with Secretary of State September 27, 1994.]

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

SECTION 1. Section 18358.15 of the Welfare and Institutions Code is amended to read:

18358.15. (a) Each foster family agency participating in the program shall provide or arrange for all the following services for children placed in foster care:

(1) Individualized needs and services plans that ensure continuity and stability in the placement of emotionally disturbed children in certified family homes that meet the needs of children making the transition from institutional placement to noninstitutional placement. The needs and services plan for each child in placement shall describe the specific needs of the child and the appropriate level of services provided to the child pursuant to Section 18358.30.

(2) Education and mental health services for children.

(3) Therapeutic after-school programs for children.

(4) In-home and support services necessary to implement the case plan.

(5) Other necessary services for children in placement, including medical and dental services.

(b) No more than one emotionally disturbed child shall be placed in a certified family home unless the participating foster family agency provides the county welfare department with a written assessment of the risk and compatibility of placing two emotionally disturbed children together. More than two emotionally disturbed children who are siblings may be placed together in the same certified family home if the placement is approved by the interagency review teams of the placing county and the participating county. However, there shall be no more than a total of five children living in a certified family home with two adults, and there shall be no more than a total of three children living in a certified family home with one adult, except in cases where children living in the home other than those placed pursuant to this chapter are 15 years of age or older.

(c) Any use of physical contact to manage the behavior of a child that is reported to the foster family agency pursuant to Section 18538.25 shall in turn be reported by the foster family agency to the Community Care Licensing Division of the department as a special incident pursuant to Section 80061 of Title 22 of the California Code of Regulations.

SEC. 2. Section 18358.30 of the Welfare and Institutions Code is

amended to read:

18358.30. (a) Rates for foster family agency programs participating under this chapter shall be exempt from the current AFDC-FC foster family agency rate setting system.

(b) Rates for foster family agency programs participating under this chapter shall be set according to the appropriate pilot classification model based on the level of services provided to the eligible child and the certified foster family. In all of the pilot classification models, the foster family agency programs shall:

(1) Provide social work services with average case loads not to exceed eight children per worker, except that social worker average case loads for children in Pilot Classification Models E and F shall not exceed 12 children per worker.

(2) Pay an amount of one thousand two hundred dollars ($1,200) per child per month to the certified foster parent or parents.

(3) Perform activities necessary for the administration of the programs, including, but not limited to, training, recruitment, certification, and monitoring of the certified foster parents.

(4) Provide a minimum average of service per week, represented by paid employee hours incurred by the participating foster family agency, by the in-home support counselor to the eligible child and the certified foster parents depending on the needs of the child and according to the following schedule:

Pilot Classification Model	In-Home Child/Youth Counselor Hours Per Week
A	31 hours
B	25 hours
C	18 hours
D	12 hours
E	0 hours
F	0 hours

(c) The department or placing county, or both, may review the level of services provided by the foster family agency program. If the level of services actually provided are less than those for the pilot classification model upon which the rate for the child was based, the rate shall be adjusted to reflect the pilot classification model actually provided, and an overpayment may be established and recovered by the department.

(d) (1) The standard rate schedule of pilot classification models for the 1993–94 fiscal year shall be:

Pilot Classification Model	Fiscal Year 1993–94 Standard Rate
A	$3,733
B	$3,423
C	$3,112
D	$2,802
E	$2,490
F	$2,099

(2) For the 1991–92 and 1992–93 fiscal years, the standardized rate for each pilot classification model shall be adjusted by an amount equal to the California Necessities Index computed pursuant to the methodology described in Section 11453, subject to the availability of funds.

(3) Beginning with the 1993–94 fiscal year, the standardized schedule of rates shall be adjusted annually by an amount equal to the California Necessities Index computed pursuant to Section 11453, subject to the availability of funds.

(e) Rates for foster family agency programs participating under this chapter shall not exceed Pilot Classification Model A at any time during an eligible child's placement. An eligible child may be initially placed in a participating intensive foster care program at any one of the five pilot classification levels A to E, inclusive, and thereafter placed at any level, either higher or lower, not to exceed a total of six months at any level other than Pilot Classification Model E, unless it is determined to be in the best interests of the child by the child's county interagency review team and the child's certified foster parents. The child's interagency county interagency placement review team may, through a formal review of the child's placement, extend the placement of an eligible child in a pilot classification model higher than Pilot Classification Model E for additional periods of up to six months each.

(f) It is the intent of the Legislature that the pilot classification model and the rate paid to participating foster family agency programs shall decrease as the child's need for services from the foster family agency decreases. The foster family agency shall notify the placing county and the department of the reduced services and the pilot classification model, and the rate shall be reduced accordingly.

(g) It is the intent of the Legislature to prohibit any duplication of public funding. Therefore, social worker services, payments to certified foster parents, administrative activities, and the services of in-home support counselors that are funded by another public source shall not be counted in determining whether the foster family agency program has met its obligations to provide the items listed in paragraphs (1), (2), (3), and (4) of subdivision (b).

CHAPTER 791

An act to amend Section 1418.8 of, and to add Section 1418.85 to, the Health and Safety Code, relating to long-term health care.

[Approved by Governor September 25, 1994. Filed with Secretary of State September 27, 1994.]

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

SECTION 1. Section 1418.8 of the Health and Safety Code is amended to read:

1418.8. (a) If the attending physician and surgeon of a resident in a skilled nursing facility or intermediate care facility prescribes or orders a medical intervention that requires informed consent be obtained prior to administration of the medical intervention, but is unable to obtain informed consent because the physician and surgeon determines that the resident lacks capacity to make decisions concerning his or her health care and that there is no person with legal authority to make those decisions on behalf of the resident, the physician and surgeon shall inform the skilled nursing facility or intermediate care facility.

(b) For purposes of subdivision (a), a resident lacks capacity to make a decision regarding his or her health care if the resident is unable to understand the nature and consequences of the proposed medical intervention, including its risks and benefits, or is unable to express a preference regarding the intervention. To make the determination regarding capacity, the physician shall interview the patient, review the patient's medical records, and consult with skilled nursing or intermediate care facility staff, as appropriate, and family members and friends of the resident, if any have been identified.

(c) For purposes of subdivision (a), a person with legal authority to make medical treatment decisions on behalf of a patient is a person designated under a valid Durable Power of Attorney for Health Care, a guardian, a conservator, or next of kin. To determine the existence of a person with legal authority, the physician shall interview the patient, review the medical records of the patient and consult with skilled nursing or intermediate care facility staff, as appropriate, and family members and friends of the resident, if any have been identified.

(d) The attending physician and the skilled nursing facility or intermediate care facility may initiate a medical intervention that requires informed consent pursuant to subdivision (e) in accordance with acceptable standards of practice.

(e) Where a resident of a skilled nursing facility or intermediate care facility has been prescribed a medical intervention by a physician and surgeon that requires informed consent and the physician has determined that the resident lacks capacity to make

health care decisions and there is no person with legal authority to make those decisions on behalf of the resident, the facility shall, except as provided in subdivision (h), conduct an interdisciplinary team review of the prescribed medical intervention prior to the administration of the medical intervention. The interdisciplinary team shall oversee the care of the resident utilizing a team approach to assessment and care planning and shall include the resident's attending physician, a registered professional nurse with responsibility for the resident, other appropriate staff in disciplines as determined by the resident's needs, and, where practicable, a patient representative, in accordance with applicable federal and state requirements. The review shall include all of the following:

(1) A review of the physician's assessment of the resident's condition.

(2) The reason for the proposed use of the medical intervention.

(3) A discussion of the desires of the patient, where known. To determine the desires of the resident, the interdisciplinary team shall interview the patient, review the patient's medical records and consult with family members or friends, if any have been identified.

(4) The type of medical intervention to be used in the resident's care, including its probable frequency and duration.

(5) The probable impact on the resident's condition, with and without the use of the medical intervention.

(6) Reasonable alternative medical interventions considered or utilized and reasons for their discontinuance or inappropriateness.

(f) A patient representative may include a family member or friend of the resident who is unable to take full responsibility for the health care decisions of the resident, but has agreed to serve on the interdisciplinary team, or other person authorized by state or federal law.

(g) The interdisciplinary team shall periodically evaluate the use of the prescribed medical intervention at least quarterly or upon a significant change in the resident's medical condition.

(h) In case of an emergency, after obtaining a physician and surgeon's order as necessary, a skilled nursing or intermediate care facility may administer a medical intervention which requires informed consent prior to the facility convening an interdisciplinary team review.

(i) Physician and surgeons and skilled nursing facilities and intermediate care facilities shall not be required to obtain a court order pursuant to Section 3201 of the Probate Code prior to administering a medical intervention which requires informed consent if the requirements of this section are met.

(j) Nothing in this section shall in any way affect the right of a resident of a skilled nursing facility or intermediate care facility for whom medical intervention has been prescribed, ordered, or administered pursuant to this section to seek appropriate judicial relief to review the decision to provide the medical intervention.

(k) No physician or other health care provider, whose action

under this section is in accordance with reasonable medical standards, is subject to administrative sanction if the physician or health care provider believes in good faith that the action is consistent with this section and the desires of the resident, or if unknown, the best interests of the resident.

(*l*) The determinations required to be made pursuant to subdivisions (a), (e), and (g), and the basis for those determinations shall be documented in the patient's medical record and shall be made available to the patient's representative for review.

(m) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 2. Section 1418.85 is added to the Health and Safety Code, immediately following Section 1418.8, to read:

1418.85. The state department shall convene a committee of representatives of long-term care provider organizations, consumer advocates, long-term care ombudsmen, and representatives from the legal system, including, but not limited to, the public guardian, to assess the need for changes to the requirements and procedures set forth in Section 1418.8. The committee shall make recommendations to the Legislature regarding any identified changes to be made in the requirements and procedures set forth in Section 1418.8 by July 1, 1995.

CHAPTER 792

An act to amend Sections 1789.12, 1789.13, 1789.16, and 1789.21 of the Civil Code, relating to credit.

[Approved by Governor September 25, 1994. Filed with Secretary of State September 27, 1994.]

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

SECTION 1. Section 1789.12 of the Civil Code is amended to read:

1789.12. As used in this title:

(a) "Credit services organization" means a person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that he or she can or will sell, provide or perform, any of the following services, in return for the payment of money or other valuable consideration:

(1) Improving a buyer's credit record, history, or rating.

(2) Obtaining a loan or other extension of credit for a buyer.

(3) Providing advice or assistance to a buyer with regard to either paragraph (1) or (2).

(b) "Credit services organization" does not include any of the following:

(1) Any person organized, chartered, or holding a license or authorization certificate to make loans or extensions of credit pursuant to the laws of this state or the United States who is subject to regulation and supervision by an official or agency of this state or the United States and who is in the business of making those loans or extensions of credit.

(2) Any bank or savings institution specified in subdivision (a) or (b) of Section 5102 of the Financial Code, whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation.

(3) Any person licensed as a prorater by the Department of Corporations when the person is acting within the course and scope of that license.

(4) Any person licensed as a real estate broker performing an act under the Real Estate Law (Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code).

(5) Any attorney licensed to practice law in this state, where the attorney renders services within the course and scope of the practice of law, unless the attorney is an employee of, or otherwise directly affiliated with, a credit services organization.

(6) Any broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission where the broker-dealer is acting within the course and scope of the regulation.

(7) Any nonprofit organization described in Section 501(c)(3) of the Internal Revenue Code that, according to a final ruling or determination by the Internal Revenue Service, is both of the following:

(A) Exempt from taxation under Section 501(a) of the Internal Revenue Code.

(B) Not a private foundation as defined in Section 509 of the Internal Revenue Code.

An advance ruling or determination of tax-exempt or foundation status by the Internal Revenue Service does not meet the requirements of this paragraph.

(c) "Buyer" means any natural person who is solicited to purchase or who purchases the services of a credit services organization.

(d) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family, or household purposes.

(e) "Consumer credit reporting agency" means a consumer credit reporting agency subject to the Consumer Credit Reporting Agencies Act, Title 1.6 (commencing with Section 1785.1).

(f) "Person" includes an individual, corporation, partnership, joint venture, or any business entity.

SEC. 2. Section 1789.13 of the Civil Code is amended to read:

1789.13. A credit services organization, and its salespersons, agents, representatives, and independent contractors who sell or attempt to sell the services of a credit services organization, shall not

do any of the following:

(a) Charge or receive any money or other valuable consideration prior to full and complete performance of the services the credit services organization has agreed to perform for or on behalf of the buyer.

(b) Fail to perform the agreed services within six months following the date the buyer signs the contract for those services.

(c) Charge or receive any money or other valuable consideration for referral of the buyer to a retail seller or other credit grantor who will or may extend credit to the buyer, if the credit which is or will be extended to the buyer (1) is upon substantially the same terms as those available to the general public or (2) is upon substantially the same terms that would have been extended to the buyer without the assistance of the credit services organization.

(d) Make, or counsel or advise any buyer to make, any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, to a consumer credit reporting agency or to any person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit, such as statements concerning a buyer's identification, home address, creditworthiness, credit standing, or credit capacity.

(e) Remove, or assist or advise the buyer to remove, adverse information from the buyer's credit record which is accurate and not obsolete.

(f) Create, or assist or advise the buyer to create, a new credit record by using a different name, address, social security number, or employee identification number.

(g) Make or use any untrue or misleading representations in the offer or sale of the services of a credit services organization, including either of the following:

(1) Guaranteeing or otherwise stating that the organization is able to delete an adverse credit history, unless the representation clearly discloses, in a manner equally as conspicuous as the guarantee, that this can be done only if the credit history is inaccurate or obsolete and is not claimed to be accurate by the creditor who submitted the information.

(2) Guaranteeing or otherwise stating that the organization is able to obtain an extension of credit, regardless of the buyer's previous credit problems or credit history, unless the representation clearly discloses, in a manner equally as conspicuous as the guarantee, the eligibility requirements for obtaining an extension of credit.

(h) Engage, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deception upon any person in connection with the offer or sale of the services of a credit services organization.

(i) Advertise or cause to be advertised, in any manner, the services of the credit services organization, without being registered with the Department of Justice.

(j) Fail to maintain an agent for service of process in this state.

(k) Transfer or assign its certificate of registration.

(*l*) Submit a buyer's dispute to a consumer credit reporting agency without the buyer's knowledge.

(m) Use a consumer credit reporting agency's telephone system or toll-free telephone number to represent the caller as the buyer in submitting a dispute of a buyer or requesting disclosure without prior authorization of the buyer.

SEC. 3. Section 1789.16 of the Civil Code is amended to read:

1789.16. (a) A credit services organization shall not provide any service to a buyer except pursuant to a written contract that complies with this section. Every contract between the buyer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, shall be dated, signed by the buyer, and include all of the following:

(1) A conspicuous statement in size equal to at least 10-point boldface type, in immediate proximity to the space reserved for the signature of the buyer, as follows:

"You, the buyer, may cancel this contract at any time prior to midnight of the fifth day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right."

(2) The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to some other person.

(3) A full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and all promises of full or partial refunds, and the estimated date by which the services are to be performed, or the estimated length of time for performing the services not to exceed six months or a shorter period consistent with the purposes of this title as may be prescribed by the Department of Justice.

(4) The credit services organization's principal business address and the name and address of its agent, other than the Secretary of State, in the State of California, authorized to receive service of process.

(b) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the contract and easily detachable, and which shall contain in type of at least 10-point the following statement written in the same language as used in the contract:

"Notice of Cancellation"

"You may cancel this contract, without any penalty or obligation, within five days from the date the contract is signed.

"If you cancel, any payment made by you under this contract must be returned within 15 days following receipt by the seller of your cancellation notice.

"To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to _____ at
(name of seller)
_____
(address of seller) (place of business)
not later than midnight _____.
(date)
"I hereby cancel this transaction."

_____ _____
(date) (purchaser's signature)

A copy of the fully completed contract and all other documents the credit services organization requires the buyer to sign shall be given to the buyer at the time they are signed.

SEC. 4. Section 1789.21 of the Civil Code is amended to read:

1789.21. (a) Any buyer injured by a violation of this title or by the credit services organization's breach of a contract subject to this title may bring any action for recovery of damages, or for injunctive relief, or both. Judgment shall be entered for actual damages, but in no case less than the amount paid by the buyer to the credit services organization, plus reasonable attorney's fees and costs. An award, if the trial court deems it proper, may be entered for punitive damages.

(b) Any person, including, but not limited to, a consumer credit reporting agency, as defined in subdivision (d) of Section 1785.3, and any consumer of, or user of, a consumer credit report under the Consumer Credit Reporting Agencies Act (Title 1.6 (commencing with Section 1785.1), and any furnisher of credit information under the Consumer Credit Reporting Agencies Act, may bring an action for the recovery of damages or for injunctive relief, or both, for a violation of this title. Any person bringing such an action who prevails in the action shall be entitled to reasonable attorney's fees and costs.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 793

An act to amend Section 664 of the Penal Code, relating to attempted murder.

[Approved by Governor September 25, 1994. Filed with Secretary of State September 27, 1994.]

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

SECTION 1. Section 664 of the Penal Code is amended to read:

664. Every person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempts, as follows:

(a) If the offense so attempted is punishable by imprisonment in the state prison, the person guilty of that attempt is punishable by imprisonment in the state prison for one-half the term of imprisonment prescribed upon a conviction of the offense so attempted; provided, however, that if the crime attempted is willful, deliberate, and premeditated murder, as defined in Section 189, the person guilty of that attempt shall be punishable by imprisonment in the state prison for life with the possibility of parole; provided, further, that if the crime attempted is any other one in which the maximum sentence is life imprisonment or death the person guilty of the attempt shall be punishable by imprisonment in the state prison for a term of five, seven, or nine years. The additional term provided in this section for attempted willful, deliberate, and premeditated murder shall not be imposed unless the fact that the attempted murder was willful, deliberate, and premeditated is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(b) If the offense so attempted is punishable by imprisonment in a county jail, the person guilty of such attempt is punishable by imprisonment in a county jail for a term not exceeding one-half the term of imprisonment prescribed upon a conviction of the offense so attempted.

(c) If the offense so attempted is punishable by a fine, the offender convicted of that attempt is punishable by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense so attempted.

(d) If a crime is divided into degrees, an attempt to commit the crime may be of any of those degrees, and the punishment for the attempt shall be determined as provided by this section.

(e) (1) Notwithstanding subdivision (a), if either attempted willful, deliberate, and premeditated murder or attempted murder is committed upon a peace officer or firefighter, as those terms are defined in paragraphs (7) and (9) of subdivision (a) of Section 190.2, and the person who commits the offense knows or reasonably should

know that the victim is such a peace officer or firefighter engaged in the performance of his or her duties, the person guilty of the attempt shall be punished by imprisonment in the state prison for life with the possibility of parole.

(2) This subdivision shall apply if it is proved that a direct but ineffectual act was committed by one person toward killing another human being and the person committing the act harbored express malice aforethought, namely, a specific intent to unlawfully kill another human being. The Legislature finds and declares that this paragraph is declaratory of existing law.

CHAPTER 794

An act to amend Section 825 of the Government Code, relating to public liability.

[Approved by Governor September 25, 1994. Filed with Secretary of State September 27, 1994.]

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

SECTION 1. Section 825 of the Government Code is amended to read:

825. (a) Except as otherwise provided in this section, if an employee or former employee of a public entity requests the public entity to defend him or her against any claim or action against him or her for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity and such request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed.

If the public entity conducts the defense of an employee or former employee against any claim or action with his or her reasonable good-faith cooperation, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed. However, where the public entity conducted such defense pursuant to an agreement with the employee or former employee reserving the rights of the public entity not to pay the judgment, compromise, or settlement until it is established that the injury arose out of an act or omission occurring within the scope of his or her employment as an employee of the public entity, the public entity is required to pay the judgment, compromise, or settlement only if it is established that the injury arose out of an act or omission occurring in the scope of his or her employment as an employee of the public entity.

Nothing in this section authorizes a public entity to pay that part of a claim or judgment that is for punitive or exemplary damages.

(b) Notwithstanding subdivision (a) or any other provision of law, a public entity, other than the state as defined in Section 900.6, is authorized to pay that part of a judgment that is for punitive or exemplary damages if the governing body of that public entity, acting in its sole discretion, finds all of the following:

(1) The judgment is based on an act or omission of an employee or former employee acting within the course and scope of his or her employment as an employee of the public entity.

(2) At the time of the act giving rise to the liability, the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent best interests of the public entity.

(3) Payment of the claim or judgment would be in the best interests of the public entity.

The discovery of the assets of a public entity and the introduction of evidence of the assets of a public entity shall not be permitted in an action in which it is alleged that a public employee is liable for punitive or exemplary damages.

The possibility that a public entity may pay that part of a judgment that is for punitive damages shall not be disclosed in any trial in which it is alleged that a public employee is liable for punitive or exemplary damages, and that disclosure shall be grounds for a mistrial.

(c) Except as provided in subdivision (d), if the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(d) The subject of payment of punitive damages pursuant to this section or any other provision of law shall not be a subject of meet and confer under the provisions of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, or pursuant to any other law or authority.

(e) Nothing in this section shall affect the provisions of Section 818 prohibiting the award of punitive damages against a public entity. This section shall not be construed as a waiver of a public entity's immunity from liability for punitive damages under Section 1981, 1983, or 1985 of Title 42 of the United States Code.

(f) (1) Except as provided in paragraph (2), a public entity shall not pay a judgment, compromise, or settlement arising from a claim or action against an elected official, if the claim or action is based on conduct by the elected official by way of tortiously intervening or attempting to intervene in, or by way of tortiously influencing or attempting to influence the outcome of, any judicial action or

proceeding for the benefit of a particular party by contacting the trial judge or any commissioner, court-appointed arbitrator, court-appointed mediator, or court-appointed special referee assigned to the matter, or the court clerk, bailiff, or marshal after an action has been filed, unless he or she was counsel of record acting lawfully within the scope of his or her employment on behalf of that party. Notwithstanding Section 825.6, if a public entity conducted the defense of an elected official against such a claim or action and the elected official is found liable by the trier of fact, the court shall order the elected official to pay to the public entity the cost of that defense.

(2) If an elected official is held liable for monetary damages in the action, the plaintiff shall first seek recovery of the judgment against the assets of the elected official. If the elected official's assets are insufficient to satisfy the total judgment, as determined by the court, the public entity may pay the deficiency if the public entity is authorized by law to pay that judgment.

(3) To the extent the public entity pays any portion of the judgment or is entitled to reimbursement of defense costs pursuant to paragraph (1), the public entity shall pursue all available creditor's remedies against the elected official, including garnishment, until that party has fully reimbursed the public entity.

(4) This subdivision shall not apply to any criminal or civil enforcement action brought in the name of the people of the State of California by an elected district attorney, city attorney, or attorney general.

CHAPTER 795

An act to amend Section 11322.4 of the Welfare and Institutions Code, relating to public assistance.

[Approved by Governor September 25, 1994. Filed with Secretary of State September 27, 1994.]

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

SECTION 1. Section 11322.4 of the Welfare and Institutions Code is amended to read:

11322.4. (a) In determining which clients shall receive services, counties shall give existing participants highest priority. If resources are not sufficient to serve all existing participants, the county shall temporarily exclude clients from participation in the following order:

(1) Participants who are not members of the target population.

(2) Participants who are members of the target population who do not volunteer for program services.

(3) Participants who are members of the target population who volunteer to receive program services.

(b) If funds are sufficient to serve all existing participants, priority

for intake shall be extended to new program registrants according to the following list in descending order:

(1) Members of the target population who are required to register under this article and who volunteer to receive GAIN services.

(2) Members of the target population who are exempt from the requirement to register under this article and who volunteer to receive GAIN services.

(3) AFDC applicants and recipients who are required to register under this article and who are members of the target population who do not volunteer to receive program services.

(4) Recipients of AFDC who are not members of the target population.

(5) Applicants for AFDC who are not members of the target population.

(c) The number of years, in whole year increments, each individual has received AFDC during the immediately preceding two-year period shall determine which individuals shall receive the highest priority in the categories described in paragraphs (4) and (5) of subdivision (b), with those who received AFDC during the greatest amount of time receiving the highest priority.

(d) (1) For purposes of this section, "target population" means a group composed of all or any of the following groups of individuals:

(A) Individuals applying for AFDC aid who have received AFDC aid for 36 of the 60 months immediately preceding the most recent month for which application has been made.

(B) Individuals receiving AFDC aid who have received AFDC aid for any 36 of the preceding 60 months.

(C) Custodial parents under the age of 24 who had little or no work experience in the preceding year.

(D) Custodial parents under the age of 24 who have not completed a high school education and are not enrolled in high school, or in a high school equivalency course of instruction.

(E) Members of a family in which the youngest child is within two years of being ineligible for AFDC because of age.

(2) Nothing in this section shall be interpreted to prohibit a county from allocating funds to target population groups, as defined in paragraph (1), in any order selected by the county, to the extent permitted by federal law, provided that no reduction in federal funding would result from that change. However, a county shall give first consideration to applicants or recipients in any target population group it selects who volunteer to participate in the program. A county may not give lesser priority to any target population group because of estimated costs of supportive services to that group.

(e) For the purposes of this section, "volunteer" means any person eligible to participate in the program, either exempt or mandatory, who expresses a desire to participate.

(f) (1) Notwithstanding any other provision of this article, except as provided in paragraph (2), any individual who fails to obtain unsubsidized employment after receiving post-assessment education

and employment training services pursuant to subdivision (a), (c), (d), or (e) of Section 11322.8 shall not receive additional training or education services until all other persons qualified for those services are being served.

(2) Additional training and education services pursuant to subdivision (a), (c), (d), or (e) of Section 11322.8 may be provided in extenuating circumstances as defined by the department. Extenuating circumstances shall be defined to include, but shall not be limited to, cases in which educational and training services previously provided cannot lead to employment within the local labor market area.

(g) This section shall not apply to individuals subject to Article 3.5 (commencing with Section 11331) during that time the article is operative.

CHAPTER 796

An act to add Section 815.3 to the Government Code, relating to governmental tort liability.

[Approved by Governor September 25, 1994. Filed with Secretary of State September 27, 1994.]

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

SECTION 1. Section 815.3 is added to the Government Code, to read:

815.3. (a) Notwithstanding any other provision of this part, unless the elected official and the public entity are named as codefendants in the same action, a public entity is not liable to a plaintiff under this part for any act or omission of an elected official employed by or otherwise representing that public entity, which act or omission constitutes an intentional tort, including, but not limited to, harassment, sexual battery, and intentional infliction of emotional distress. For purposes of this section, harassment in violation of state or federal law constitutes an intentional tort, to the extent permitted by federal law. This section shall not apply to defamation.

(b) If the elected official is held liable for an intentional tort other than defamation in such an action, the trier of fact in reaching the verdict shall determine if the act or omission constituting the intentional tort arose from and was directly related to the elected official's performance of his or her official duties. If the trier of fact determines that the act or omission arose from and was directly related to the elected official's performance of his or her official duties, the public entity shall be liable for the judgment as provided by law. For the purpose of this subdivision, employee managerial functions shall be deemed to arise from, and to directly relate to, the elected official's official duties. However, acts or omissions

constituting sexual harassment shall not be deemed to arise from, and to directly relate to, the elected official's official duties.

(c) If the trier of fact determines that the elected official's act or omission did not arise from and was not directly related to the elected official's performance of his or her official duties, upon a final judgment, including any appeal, the plaintiff shall first seek recovery of the judgment against the assets of the elected official. If the court determines that the elected official's assets are insufficient to satisfy the total judgment, including plaintiff's costs as provided by law, the court shall determine the amount of the deficiency and the plaintiff may seek to collect that remainder of the judgment from the public entity. The public entity may pay that deficiency if the public entity is otherwise authorized by law to pay that judgment.

(d) To the extent the public entity pays any portion of the judgment against the elected official pursuant to subdivision (c) or has expended defense costs in an action in which the trier of fact determines the elected official's action did not arise from and did not directly relate to his or her performance of official duties, the public entity shall pursue all available creditor's remedies against the elected official in indemnification, including garnishment, until the elected official has fully reimbursed the public entity.

(e) If the public entity elects to appeal the judgment in an action brought pursuant to this section, the entity shall continue to provide a defense for the official until the case is finally adjudicated, as provided by law.

(f) It is the intent of the Legislature that elected officials assume full fiscal responsibility for their conduct which constitutes an intentional tort not directly related to their official duties committed for which the public entity they represent may also be liable, while maintaining fair compensation for those persons injured by such conduct.

(g) This section shall not apply to a criminal or civil enforcement action brought on behalf of the state by an elected district attorney, city attorney, or Attorney General.

(h) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

CHAPTER 797

An act to amend Section 825.6 of the Government Code, relating to governmental liability.

[Approved by Governor September 25, 1994. Filed with Secretary of State September 27, 1994.]

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

SECTION 1. Section 825.6 of the Government Code is amended to read:

825.6. (a) (1) Except as provided in subdivision (b), if a public entity pays any claim or judgment, or any portion thereof, either against itself or against an employee or former employee of the public entity, for an injury arising out of an act or omission of the employee or former employee of the public entity, the public entity may recover from the employee or former employee the amount of that payment if he or she acted or failed to act because of actual fraud, corruption, or actual malice, or willfully failed or refused to conduct the defense of the claim or action in good faith. Except as provided in paragraph (2) or (3), a public entity may not recover any payments made upon a judgment or claim against an employee or former employee if the public entity conducted his or her defense against the action or claim.

(2) If a public entity pays any claim or judgment, or any portion thereof, against an employee or former employee of the public entity for an injury arising out of his or her act or omission, and if the public entity conducted his or her defense against the claim or action pursuant to an agreement with him or her reserving the rights of the public entity against him or her, the public entity may recover the amount of the payment from him or her unless he or she establishes that the act or omission upon which the claim or judgment is based occurred within the scope of his employment as an employee of the public entity and the public entity fails to establish that he or she acted or failed to act because of actual fraud, corruption or actual malice or that he or she willfully failed or refused to reasonably cooperate in good faith in the defense conducted by the public entity.

(3) If a public entity pays any claim or judgment, or any portion thereof, against an employee or former employee of the public entity for an injury arising out of his or her act or omission, and if the public entity conducted the defense against the claim or action in the absence of an agreement with him or her reserving the rights of the public entity against him or her, the public entity may recover the amount of such payment from him or her if he or she willfully failed or refused to reasonably cooperate in good faith in the defense conducted by the public entity.

(b) (1) Upon a felony conviction for a violation of Section 1195 of

this code, or of Section 68, 86, 93, 165, 504, or 518 of the Penal Code, by an elected official or former elected official of a public entity for an act or omission of that person while in office, the elected official or former elected official shall forfeit any rights to defense or indemnification under Section 825 with respect to a claim for damages for an injury arising from that act or omission.

(2) If a public entity pays any claim or judgment, or any portion thereof, either against itself or against an elected official or former elected official of the public entity, for an injury arising out of an act or omission of the elected official or former elected official of the public entity, which act or omission constituted a felony violation of Section 1195 of this code, or of Section 68, 86, 93, 165, 504, or 518 of the Penal Code, the public entity shall recover from the elected official or former elected official the amount of that payment upon the felony conviction of the elected official or former elected official for that act or omission. Upon that conviction, the public entity shall also recover from the elected official the costs of any defense to a civil action filed against the elected official for that act or omission.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 798

An act to add Sections 5080.24 5080.25, and 5090.41 to the Public Resources Code, relating to the state park system, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1994. Filed with Secretary of State September 27, 1994.]

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

SECTION 1. Section 5080.24 is added to the Public Resources Code, to read:

5080.24. (a) The department may enter into an interim agreement with the Pacific Grove-Asilomar Operating Corporation on the same basis as the cancelled contract, except that it shall be modified as specified by subdivisions (b) to (e), inclusive, until the department awards a contract pursuant to Section 5080.25.

(b) Any interim agreement pursuant to subdivision (a) shall provide that the amount of compensation received by the general manager of the Pacific Grove-Asilomar Operating Corporation shall be subject to determination by the Legislature in the annual Budget Act.

(c) Any interim agreement pursuant to subdivision (a) shall require the Pacific Grove-Asilomar Operating Corporation to continue to set rates and to take reservations for dates beyond the date for which the interim agreement is operative.

(d) Any interim agreement pursuant to subdivision (a) shall provide that the meetings of the board of directors of the Pacific Grove-Asilomar Operating Corporation shall be conducted in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 or Part 1 of Division 3 of Title 2 of the Government Code) and the board of directors shall be considered a state body under Section 11121.2 of the Government Code.

(e) Any interim agreement pursuant to subdivision (a) shall provide that all business and financial records of the Pacific Grove-Asilomar Operating Corporation, including existing records, but not including records that would be personal information under Section 1798.3 of the Civil Code if maintained by an agency, shall be treated as public records subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The term "employment contract" as used in Section 6254.8 of the Government Code shall be deemed to mean an employment contract between the Pacific Grove-Asilomar Operating Corporation and its employee.

SEC. 2. Section 5080.25 is added to the Public Resources Code, to read:

5080.25. (a) The department shall enter into a contract for the

construction, maintenance, and operation of concessions at the Asilomar Conference Grounds. The contract shall be awarded pursuant to this article, except this section shall prevail in case of conflict between this section and this article.

(b) The contract shall not be advertised for bid, negotiated, renegotiated, or amended in any material respect unless it has been submitted to the Legislature for review.

(c) The contract shall require the concessionaire to pay for administrative costs, capital expenditures, and department staff necessary for the operation of, and improvements to, the Asilomar State Beach and Conference Center, including restoration projects.

(d) The contract shall require all capital improvements to the Asilomar State Beach and Conference Center to be solely the property of the state.

(e) The contract shall require the concessionaire to honor all rates and reservations made by the Pacific Grove-Asilomar Operating Corporation under the interim agreement described in Section 5080.24.

(f) The contract shall require the concessionaire to give preference to the employees of the Pacific Grove-Asilomar Operating Corporation when staffing the operation of the concessionaire.

(g) The contract shall emphasize the importance of protecting the natural and cultural values of the Asilomar State Beach and Conference Center.

(h) In awarding the contract, the department shall consider bids or proposals from both nonprofit and for-profit entities.

(i) If the contract is awarded to a concessionaire governed by a board of directors, the contract shall require the department to be present at meetings of the board of directors relating to the construction, maintenance, finances, or operation of concessions at the Asilomar Conference Grounds, and shall require those meetings to be conducted in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code). If the contract is awarded to a concessionaire that is not governed by a board of directors, the contract shall require the concessionaire to hold quarterly meetings at the Asilomar Conference Grounds, relating to the construction, maintenance, finances, or operation of concessions at the Asilomar Conference Grounds, at which the department shall be present, that shall be conducted in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(j) The contract shall provide that all business and financial records of the concessionaire relating to the construction, maintenance, or operation of concessions at the Asilomar Conference Grounds, including existing records, but not including records that would be personal information under Section 1798.3 of

the Civil Code if maintained by an agency, shall be treated as public records subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The term "employment contract" as used in Section 6254.8 of the Government Code shall be deemed to mean an employment contract between the concessionaire and its employee.

(k) In awarding the contract, the department shall consider without prejudice any bid or proposal submitted by the Pacific Grove-Asilomar Operating Corporation.

(*l*) The department shall, for the purpose of ensuring that all bidders are afforded an equal opportunity to compete for the contract, consider the estimated amount of fees or taxes that might be paid to the state or to a local government by a bidder as a result of the contract among those factors to be used to evaluate the bidder's bid or proposal for the contract. The department shall consult with the Department of Finance and the Board of Equalization to obtain information necessary to estimate the amount of fees or taxes that might be paid by a bidder as a result of the contract.

(m) Any revenues received by the department pursuant to the contract that are identified by the department as funds in excess of the approved operating budget and the approved capital improvement budget for the Asilomar Conference Grounds shall be deposited in the State Parks and Recreation Fund.

(n) On or before January 1, 1995, the department shall submit a request for proposal for the contract to the Assembly Water, Parks, and Wildlife Committee, the Senate Natural Resources Committee, the Assembly Ways and Means Committee, and the Senate Budget and Fiscal Review Committee for review.

SEC. 3. Section 5090.41 is added to the Public Resources Code, to read:

5090.41. The following lands within the Hollister Hills State Vehicular Area shall be managed, as follows:

(a) The division shall designate and set aside 280 acres for nature study, which shall be closed to the operation of off-highway motor vehicles. The division shall, in carrying out this subdivision, protect the natural and cultural values of the designated lands by taking appropriate measures, which may include the erection of physical barriers to off-highway vehicle use.

(b) The division shall identify approximately 395 acres as a "Buffer Zone" on the Record of Survey filed by the State of California with the County Recorder of San Benito County, California, on April 2, 1990, in the Book of Maps, Number 10, Page Number 79, plus the three southernmost areas, consisting of approximately 196 acres identified on Figure I-2, Page 5, Appendix, Environmental Impact Report for Acquisition of Additional Land at Hollister Hills SVRA, State Clearinghouse Number 88051716, which shall be closed to the operation of off-highway motor vehicles.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the interests of the people of the state of California at the Asilomar Conference Grounds, and to ensure that the public and the state park system receive a benefit from the operation of the Asilomar Conference Grounds, it is necessary that this act take effect immediately.

CHAPTER 799

An act to amend Sections 3068, 3068.1, 3070, 3071, 3072, and 3073 of the Civil Code, relating to vehicle liens.

[Approved by Governor September 25, 1994. Filed with Secretary of State September 27, 1994.]

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

SECTION 1. Section 3068 of the Civil Code is amended to read:

3068. (a) Every person has a lien dependent upon possession for the compensation to which the person is legally entitled for making repairs or performing labor upon, and furnishing supplies or materials for, and for the storage, repair, or safekeeping of, and for the rental of parking space for, any vehicle of a type subject to registration under the Vehicle Code, subject to the limitations set forth in this chapter. The lien shall be deemed to arise at the time a written statement of charges for completed work or services is presented to the registered owner or 15 days after the work or services are completed, whichever occurs first.

(b) (1) Any lien under this section that arises because work or services have been performed on a vehicle with the consent of the registered owner shall be extinguished and no lien sale shall be conducted unless either of the following occurs:

(A) The lienholder applies for an authorization to conduct a lien sale within 30 days after the lien has arisen.

(B) An action in court is filed within 30 days after the lien has arisen.

(2) A person whose lien for work or services on a vehicle has been extinguished shall turn over possession of the vehicle, at the place where the work or services were performed, to the legal owner or the lessor upon demand of the legal owner or lessor, and upon tender by the legal owner or lessor, by cashier's check or in cash, of only the amount for storage, safekeeping, or parking space rental for the vehicle to which the person is entitled by subdivision (c).

(3) Any lien under this section that arises because work or services have been performed on a vehicle with the consent of the registered

owner shall be extinguished, and no lien sale shall be conducted, if the lienholder, after written demand made by either personal service or certified mail with return receipt requested by the legal owner or the lessor to inspect the vehicle, fails to permit that inspection by the legal owner or lessor, or his or her agent, within a period of time not sooner than 24 hours nor later than 72 hours after the receipt of that written demand, during the normal business hours of the lienholder.

(c) The lienholder shall not charge the legal owner or lessor any amount for release of the vehicle in excess of the amounts authorized by this subdivision.

(1) That portion of the lien in excess of seven hundred fifty dollars ($750) for any work or services, or that amount in excess of four hundred dollars ($400) for any storage, safekeeping, or rental of parking space or, if an application for an authorization to conduct a lien sale has been filed pursuant to Section 3071 within 30 days after the commencement of the storage or safekeeping, in excess of five hundred dollars ($500) for any storage or safekeeping, rendered or performed at the request of any person other than the legal owner or lessor, is invalid, unless prior to commencing any work, services, storage, safekeeping, or rental of parking space, the person claiming the lien gives actual notice in writing either by personal service or by registered letter addressed to the legal owner named in the registration certificate, and the written consent of that legal owner is obtained before any work, services, storage, safekeeping, or rental of parking space are performed.

(2) If any portion of a lien includes charges for the care, storage, or safekeeping of, or for the rental of parking space for, a vehicle for a period in excess of 60 days, the portion of the lien that accrued after the expiration of that period is invalid unless Sections 10650 and 10652 of the Vehicle Code have been complied with by the holder of the lien.

(3) The charge for the care, storage, or safekeeping of a vehicle which may be charged to the legal owner or lessor shall not exceed that for one day of storage if, 24 hours or less after the vehicle is placed in storage, a request is made for the release of the vehicle. If the request is made more than 24 hours after the vehicle is placed in storage, charges may be imposed on a full, calendar-day basis for each day, or part thereof, that the vehicle is in storage.

(d) In any action brought by or on behalf of the legal owner or lessor to recover a vehicle alleged to be wrongfully withheld by the person claiming a lien pursuant to this section, the prevailing party shall be entitled to reasonable attorney's fees and costs, not to exceed one thousand seven hundred fifty dollars ($1,750).

SEC. 2. Section 3068.1 of the Civil Code is amended to read:

3068.1. (a) Every person has a lien dependent upon possession for the compensation to which the person is legally entitled for towing or storage of any vehicle subject to registration that has been authorized to be removed by a public agency, a private property

owner pursuant to Section 22658 of the Vehicle Code, or a lessee, operator, or registered owner of the vehicle. The lien is deemed to arise on the date of possession of the vehicle. Possession is deemed to arise when the vehicle is removed and is in transit. A person seeking to enforce a lien for the storage and safekeeping of a vehicle shall impose no charge exceeding that for one day of storage if, 24 hours or less after the vehicle is placed in storage, a request is made for the release of the vehicle. If the request is made more than 24 hours after the vehicle is placed in storage, charges may be imposed on a full, calendar-day basis for each day, or part thereof, that the vehicle is in storage.

(b) If the vehicle has been determined to have a value not exceeding two thousand five hundred dollars ($2,500), the lien shall be satisfied pursuant to Section 3072. Lien-sale proceedings pursuant to Section 3072 shall commence within 15 days of the date the lien arises. No storage shall accrue beyond the 15-day period unless lien-sale proceedings pursuant to Section 3072 have commenced. The storage lien may be for a period not exceeding 60 days if a completed notice of a pending lien sale form has been filed pursuant to Section 3072 within 15 days after the lien arises. Notwithstanding this 60-day limitation, the storage lien may be for a period not exceeding 120 days if any one of the following occurs:

(1) A Declaration of Opposition is filed with the department pursuant to Section 3072.

(2) The vehicle has an out-of-state registration.

(3) The vehicle identification number was altered or removed.

(4) A person who has an interest in the vehicle becomes known to the lienholder after the lienholder has complied with subdivision (b) of Section 3072.

(c) If the vehicle has been determined to have a value exceeding two thousand five hundred dollars ($2,500) pursuant to Section 22670 of the Vehicle Code, the lien shall be satisfied pursuant to Section 3071. The storage lien may be for a period not exceeding 120 days if an application for an authorization to conduct a lien sale has been filed pursuant to Section 3071.

(d) Any lien under this section shall be extinguished, and no lien sale shall be conducted, if any one of the following occurs:

(1) The lienholder, after written demand to inspect the vehicle made by either personal service or certified mail with return receipt requested by the legal owner or the lessor, fails to permit the inspection by the legal owner or lessor, or his or her agent, within a period of time of at least 24 hours, but not to exceed 72 hours, after the receipt of that written demand, during the normal business hours of the lienholder. The legal owner or lessor shall comply with inspection and vehicle release policies of the impounding public agency.

(2) The amount claimed for storage exceeds the posted rates.

SEC. 3. Section 3070 of the Civil Code is amended to read:

3070. (a) Whenever the possessory lien upon any vehicle is lost

through trick, fraud, or device, the repossession of the vehicle by the lienholder revives the possessory lien but any lien so revived is subordinate to any right, title, or interest of any person under any sale, transfer, encumbrance, lien, or other interest acquired or secured in good faith and for value between the time of the loss of possession and the time of repossession.

(b) It is a misdemeanor for any person to obtain possession of any vehicle or any part thereof subject to a lien pursuant to this chapter by trick, fraud, or device.

(c) It is a misdemeanor for any person claiming a lien on a vehicle to knowingly violate this chapter.

(d) (1) Any person who improperly causes a vehicle to be towed or removed in order to create or acquire a lienhold interest enforceable under this chapter, or who violates subdivision (c), shall forfeit all claims for towing, removal, or storage, and shall be liable to the owner or lessee of the vehicle for the cost of removal, transportation, and storage, damages resulting from the towing, removal, transportation, or storage of the vehicle, attorneys' fees, and court costs.

(2) For purposes of this subdivision, "improperly causes a vehicle to be towed or removed" includes, but is not limited to, engaging in any of the following acts, the consequence of which is the towing or removal of a vehicle:

(A) Failure to comply with Section 10650, 10652.5, or 10655 of the Vehicle Code.

(B) Misrepresentation of information described in subdivision (b) of Section 10650 of the Vehicle Code.

(C) Failure to comply with Section 22658 of the Vehicle Code.

(D) Failure, when obtaining authorization for the removal of a vehicle from a vehicle owner or operator where a law enforcement officer is not present at the scene of an accident, to present a form for signature that plainly identifies all applicable towing and storage fees and charges by type and amount, and identifies the name and address of the storage facility unless a different storage facility is specified by the vehicle owner or operator, and to furnish a copy of the signed form to the owner or operator.

(E) Failure by the owner or operator of a facility used for the storage of towed vehicles to display, in plain view at all cashiers' stations, a sign not less than 17 by 22 inches in size with lettering not less than one inch in height, disclosing all storage fees and charges in force, including the maximum daily storage rate.

(F) Undertaking repairs or service on a vehicle which is being stored at a facility used for the storage of towed vehicles without first providing a written estimate to, and obtaining the express written consent of, the owner of the vehicle.

(G) The promise to pay or the payment of money or other valuable consideration by any owner or operator of a towing service to the owner or operator of the premises from which the vehicle is towed or removed, for the privilege of towing or removing the

vehicle.

SEC. 4. Section 3071 of the Civil Code is amended to read:

3071. (a) A lienholder shall apply to the department for the issuance of an authorization to conduct a lien sale pursuant to this section for any vehicle with a value determined to be over two thousand five hundred dollars ($2,500). A filing fee shall be charged by the department and may be recovered by the lienholder if a lien sale is conducted or if the vehicle is redeemed. The application shall be executed under penalty of perjury and shall include all of the following information:

(1) A description of the vehicle, including make, year model, identification number, license number, and state of registration. For motorcycles, the engine number shall also be included. If the vehicle identification number is not available, the Department of Motor Vehicles shall request an inspection of the vehicle by a peace officer, licensed vehicle verifier, or departmental employee before accepting the application.

(2) The names and addresses of the registered and legal owners of the vehicle, if ascertainable from the registration certificates within the vehicle, and the name and address of any person whom the lienholder knows or reasonably should know claims an interest in the vehicle.

(3) A statement of the amount of the lien and the facts which give rise to the lien.

(b) Upon receipt of an application made pursuant to subdivision (a), the department shall do all of the following:

(1) Notify the vehicle registry agency of a foreign state of the pending lien sale, if the vehicle bears indicia of registration in that state.

(2) By certified mail, send a notice, a copy of the application, and a return envelope preaddressed to the department to the registered and legal owners at their addresses of record with the department, and to any other person whose name and address is listed in the application.

(c) The notice required pursuant to subdivision (b) shall include all of the following statements and information:

(1) An application has been made with the department for authorization to conduct a lien sale.

(2) The person has a right to a hearing in court.

(3) If a hearing in court is desired, a Declaration of Opposition form, signed under penalty of perjury, shall be signed and returned to the department within 10 days of the date that the notice required pursuant to subdivision (b) was mailed.

(4) If the Declaration of Opposition form is signed and returned to the department, the lienholder shall be allowed to sell the vehicle only if he or she obtains a court judgment or if he or she obtains a subsequent release from the declarant or if the declarant cannot be served as described in subdivision (e).

(5) If a court action is filed, the declarant shall be notified of the

lawsuit at the address shown on the Declaration of Opposition form and may appear to contest the claim.

(6) The person may be liable for court costs if a judgment is entered in favor of the lienholder.

(d) If the department receives the Declaration of Opposition form in the time specified, the department shall notify the lienholder within 16 days of the receipt of the form that a lien sale shall not be conducted unless the lienholder files an action in court within 30 days of the department's notice under this subdivision. A lien sale of the vehicle shall not be conducted unless judgment is subsequently entered in favor of the lienholder or the declarant subsequently releases his or her interest in the vehicle. If a money judgment is entered in favor of the lienholder and the judgment is not paid within five days after becoming final, then the judgment may be enforced by lien sale proceedings conducted pursuant to subdivision (f).

(e) Service on the declarant in person or by certified mail with return receipt requested, signed by the declarant or an authorized agent of the declarant at the address shown on the Declaration of Opposition form, shall be effective for the serving of process. If the lienholder has served the declarant by certified mail at the address shown on the Declaration of Opposition form and the mail has been returned unclaimed, or if the lienholder has attempted to effect service on the declarant in person with a marshal, sheriff, or licensed process server and the marshal, sheriff, or licensed process server has been unable to effect service on the declarant, the lienholder may proceed with the judicial proceeding or proceed with the lien sale without a judicial proceeding. The lienholder shall notify the Department of Motor Vehicles of the inability to effect service on the declarant and shall provide the Department of Motor Vehicles with a copy of the documents with which service on the declarant was attempted. Upon receipt of the notification of unsuccessful service, the Department of Motor Vehicles shall send authorization of the sale to the lienholder and send notification of the authorization to the declarant.

(f) Upon receipt of authorization to conduct the lien sale from the department, the lienholder shall immediately do all of the following:

(1) At least five days, but not more than 20 days, prior to the lien sale, not counting the day of the sale, give notice of the sale by advertising once in a newspaper of general circulation published in the county in which the vehicle is located. If there is no newspaper published in the county, notice shall be given by posting a Notice of Sale form in three of the most public places in the town in which the vehicle is located and at the place where the vehicle is to be sold for 10 consecutive days prior to and including the day of the sale.

(2) Send a Notice of Pending Lien Sale form 20 days prior to the sale but not counting the day of sale, by certified mail with return receipt requested, to each of the following:

(A) The registered and legal owners of the vehicle, if registered

in this state.

(B) All persons known to have an interest in the vehicle.

(C) The department.

(g) All notices required by this section, including the notice forms prescribed by the department, shall specify the make, year model, vehicle identification number, license number, and state of registration, if available, and the specific date, exact time, and place of sale. For motorcycles, the engine number shall also be included.

(h) No lien sale shall be undertaken pursuant to this section unless the vehicle has been available for inspection at a location easily accessible to the public for at least one hour before the sale and is at the place of sale at the time and date specified on the notice of sale. Sealed bids shall not be accepted. The lienholder shall conduct the sale in a commercially reasonable manner.

(i) Within 10 days after the sale of any vehicle pursuant to this section, the legal or registered owner may redeem the vehicle upon the payment of the amount of the sale, all costs and expenses of the sale, together with interest on the sum at the rate of 12 percent per annum from the due date thereof or the date when that sum was advanced until the repayment. If the vehicle is not redeemed, all lien sale documents required by the department shall then be completed and delivered to the buyer.

(j) Any lien sale pursuant to this section shall be void if the lienholder does not comply with this chapter. Any lien for fees or storage charges for parking and storage of a motor vehicle shall be subject to Section 10652.5 of the Vehicle Code.

SEC. 5. Section 3072 of the Civil Code is amended to read:

3072. (a) For vehicles with a value determined to be two thousand five hundred dollars ($2,500) or less, the lienholder shall apply to the department for the names and addresses of the registered and legal owners of record. The request shall include a description of the vehicle, including make, year, model, identification number, license number, and state of registration. If the vehicle identification number is not available, the Department of Motor Vehicles shall request an inspection of the vehicle by a peace officer, licensed vehicle verifier, or departmental employee before releasing the names and addresses of the registered and legal owners and interested parties.

(b) The lienholder shall, immediately upon receipt of the names and addresses, send, by certified mail with return receipt requested or by United States Postal Service Certificate of Mailing, a completed Notice of Pending Lien Sale form, a blank Declaration of Opposition form, and a return envelope preaddressed to the department, to the registered owner and legal owner at their addresses of record with the department, and to any other person known to have an interest in the vehicle. The lienholder shall additionally send a copy of the completed Notice of Pending Lien Sale form to the department by certified mail on the same day that the other notices are mailed pursuant to this subdivision.

(c) All notices to persons having an interest in the vehicle shall be signed under penalty of perjury and shall include all of the following information and statements:

(1) A description of the vehicle, including make, year model, identification number, license number, and state of registration. For motorcycles, the engine number shall also be included.

(2) The specific date, exact time, and place of sale, which shall be set not less than 31 days, but not more than 41 days, from the date of mailing.

(3) The names and addresses of the registered and legal owners of the vehicle and any other person known to have an interest in the vehicle.

(4) All of the following statements:

(A) The amount of the lien and the facts concerning the claim which gives rise to the lien.

(B) The person has a right to a hearing in court.

(C) If a court hearing is desired, a Declaration of Opposition form, signed under penalty of perjury, shall be signed and returned to the department within 10 days of the date the Notice of Pending Lien Sale form was mailed.

(D) If the Declaration of Opposition form is signed and returned, the lienholder shall be allowed to sell the vehicle only if he or she obtains a court judgment or if he or she obtains a subsequent release from the declarant or if the declarant cannot be served as described in subdivision (e).

(E) If a court action is filed, the declarant shall be notified of the lawsuit at the address shown on the Declaration of Opposition form and may appear to contest the claim.

(F) The person may be liable for court costs if a judgment is entered in favor of the lienholder.

(d) If the department receives the completed Declaration of Opposition form within the time specified, the department shall notify the lienholder within 16 days that a lien sale shall not be conducted unless the lienholder files an action in court within 30 days of the notice and judgment is subsequently entered in favor of the lienholder or the declarant subsequently releases his or her interest in the vehicle. If a money judgment is entered in favor of the lienholder and the judgment is not paid within five days after becoming final, then the judgment may be enforced by lien sale proceedings conducted pursuant to subdivision (f).

(e) Service on the declarant in person or by certified mail with return receipt requested, signed by the declarant or an authorized agent of the declarant at the address shown on the Declaration of Opposition form, shall be effective for the serving of process. If the lienholder has served the declarant by certified mail at the address shown on the Declaration of Opposition form and the mail has been returned unclaimed, or if the lienholder has attempted to effect service on the declarant in person with a marshal, sheriff, or licensed process server and the marshal, sheriff, or licensed process server has

been unable to effect service on the declarant, the lienholder may proceed with the judicial proceeding or proceed with the lien sale without a judicial proceeding. The lienholder shall notify the Department of Motor Vehicles of the inability to effect service on the declarant and shall provide the Department of Motor Vehicles with a copy of the documents with which service on the declarant was attempted. Upon receipt of the notification of unsuccessful service, the Department of Motor Vehicles shall send authorization of the sale to the lienholder and shall send notification of the authorization to the declarant.

(f) At least 10 consecutive days prior to and including the day of the sale, the lienholder shall post a Notice of Pending Lien Sale form in a conspicuous place on the premises of the business office of the lienholder and if the pending lien sale is scheduled to occur at a place other than the premises of the business office of the lienholder, at the site of the forthcoming sale. The Notice of Pending Lien Sale form shall state the specific date and exact time of the sale and description of the vehicle, including the make, year model, identification number, license number, and state of registration. For motorcycles, the engine number shall also be included. The notice of sale shall remain posted until the sale is completed.

(g) No lien sale shall be undertaken pursuant to this section unless the vehicle has been available for inspection at a location easily accessible to the public at least one hour before the sale and is at the place of sale at the time and date specified on the notice of sale. Sealed bids shall not be accepted. The lienholder shall conduct the sale in a commercially reasonable manner. All lien sale documents required by the department shall be completed and delivered to the buyer immediately following the sale.

(h) Any lien sale pursuant to this section shall be void if the lienholder does not comply with this chapter. Any lien for fees or storage charges for parking and storage of a motor vehicle shall be subject to Section 10652.2 of the Vehicle Code.

SEC. 6. Section 3073 of the Civil Code is amended to read:

3073. The proceeds of a vehicle lien sale under this article shall be disposed of as follows:

(a) The amount necessary to discharge the lien and the cost of processing the vehicle shall be paid to the lienholder. The cost of processing shall not exceed seventy dollars ($70) for each vehicle valued at two thousand five hundred dollars ($2,500) or less, or one hundred dollars ($100) for each vehicle valued over two thousand five hundred dollars ($2,500).

(b) The balance, if any, shall be forwarded to the Department of Motor Vehicles within 15 days of any sale conducted pursuant to Section 3071 or within five days of any sale conducted pursuant to Section 3072 and deposited in the Motor Vehicle Account in the State Transportation Fund, unless federal law requires these funds to be disposed in a different manner.

(c) Any person claiming an interest in the vehicle may file a claim

with the Department of Motor Vehicles for any portion of the funds from the lien sale that were forwarded to the department pursuant to subdivision (b). Upon a determination of the Department of Motor Vehicles that the claimant is entitled to an amount from the balance deposited with the department, the department shall pay that amount determined by the department, which amount shall not exceed the amount forwarded to the department pursuant to subdivision (b) in connection with the sale of the vehicle in which the claimant claims an interest. The department shall not honor any claim unless the claim has been filed within three years of the date the funds were deposited in the Motor Vehicle Account.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 800

An act to amend Section 667.51 of the Penal Code, relating to crime.

[Approved by Governor September 25, 1994. Filed with Secretary of State September 27, 1994.]

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

SECTION 1. Section 667.51 of the Penal Code is amended to read:

667.51. (a) Any person who is found guilty of violating Section 288 shall receive a five-year enhancement for a prior conviction of an offense listed in subdivision (b), provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction.

(b) Section 261, 264.1, 285, 286, 288, 288a, 288.5, or 289, or any offense committed in another jurisdiction that includes all of the elements of any of the offenses set forth in this subdivision.

(c) Section 261, 264.1, 286, 288, 288a, 288.5, or 289, or any offense committed in another jurisdiction that includes all of the elements of any of the offenses set forth in this subdivision.

(d) A violation of Section 288 by a person who has been previously

convicted two or more times of an offense listed in subdivision (c) is punishable as a felony by imprisonment in the state prison for 15 years to life. However, if the two or more prior convictions were for violations of Section 288, this subdivision is applicable only if the current violation or at least one of the prior convictions is for an offense other than a violation of subdivision (a) of Section 288. For purposes of this subdivision, a prior conviction is required to have been for charges brought and tried separately. The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but that person shall not otherwise be released on parole prior to that time.

CHAPTER 801

An act relating to parklands and recreational facilities.

[Approved by Governor September 25, 1994. Filed with Secretary of State September 27, 1994.]

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

SECTION 1. Pursuant to Section 5096.27 of the Public Resources Code, the County of Fresno is hereby authorized to convert to a different use up to 20 acres of parkland at Laton-Kingston Regional Park, which was partially acquired with state grant funds under the Cameron-Unruh Beach, Park, Recreational, and Historical Facilities Bond Act of 1964 (Chapter 1.6 (commencing with Section 5096.1) of Division 5 of the Public Resources Code), subject to the following conditions:

(a) The county acquires substitute parkland and recreational facilities at least equal in area and of equal or greater fair market value and recreational utility than the converted parkland.

(b) The county provides the Department of Parks and Recreation with appraisals of both the parkland to be converted and the parkland and recreational facilities to be substituted for the department's review and approval.

(c) The county submits to the Department of Parks and Recreation copies of the preliminary title report for the land to be substituted.

(d) The county complies with the Public Park Preservation Act of 1971 (Chapter 2.5 (commencing with Section 5400) of Division 5 of the Public Resources Code).

CHAPTER 802

An act to add and repeal Section 11015.5 of the Government Code, relating to state agencies.

[Approved by Governor September 25, 1994. Filed with Secretary of State September 27, 1994.]

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

SECTION 1. Section 11015.5 is added to the Government Code, to read:

11015.5. (a) The Director of General Services shall appoint an interagency task force to discuss and recommend methods of improving security at state agency offices where state employees have direct contact with the public. The task force shall be comprised of representatives of the Department of Motor Vehicles, the Department of General Services, the Employment Development Department, the Health and Welfare Agency, the Department of Industrial Relations and the Department of Justice. Funding for the task force shall be made by utilizing the existing resources of represented agencies and departments. The task force shall present its recommendations for improving security to the Governor and the Legislature by November 1, 1995.

(b) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

CHAPTER 803

An act to amend Sections 20134, 20168, 20213, 20223, 20233, 20253, 20273, 20283, 20293, 20313, 20331, 20685, 20736, 20751.1, 20806, 20812, 20914, 20918, 20926, 20931, 20941, 20961, 20991, 21020.2, 21024, 21031, 21061, 21081, 21091, 21101, 21111, 21121, 21131, 21141, 21151, 21161, 21171, 21181, 21191, 21196, 21203, 21212, 21221, 21231, 21241, 21251, 21261, 21271, 21311, 21321, 21331, 21341, 21351, 21361, 21371, 21381, 21391, 21401, 21411, 21421, 21431, 21441, 21451, 21461, 21491, 21501, 21511, 21521, 21531, 21541, 21572, 21581, 21591, 21601, 21621, 21631, and 21641 of, to add Sections 1102, 21472, 21482, 21552, 21618, and 21624 to, to add Chapter 2.5 (commencing with Section 22050) to Part 3 of Division 2 of, and to repeal and add Sections 20205.1, 20567, 20586, 20604, 20635, 20645, 21043, 21072, 21290, 21567, and 22035 of, the Public Contract Code, relating to contracts.

[Approved by Governor September 25, 1994. Filed with Secretary of State September 27, 1994.]

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

SECTION 1. Section 1102 is added to the Public Contract Code, to read:

1102. "Emergency," as used in this code, means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

SEC. 1.1. Section 20134 of the Public Contract Code is amended to read:

20134. (a) In cases of emergency, when repair or replacements are necessary to permit the continued conduct of county operations or services, the board of supervisors, by majority consent, may proceed at once to replace or repair any and all structures without adopting the plans, specifications, strain sheets, or working details or, subject to Chapter 2.5 (commencing with Section 22050), giving notice for bids to let contracts. If notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The work may be done by day labor under the direction of the board, by contract, or by a combination of the two. If the work is done wholly or in part by contract, the contractor shall be paid the actual cost of the use of machinery and tools and of material, and labor and of workers' compensation insurance expended by him or her in doing the work, plus not more than 15 percent to cover all profits and administration. No more than the lowest current market prices shall be paid for materials whenever possible.

(b) In a county of the first, second, third, or fourth class, which is under court order to relieve jail overcrowding or in which the sheriff certifies that the inmate capacity of the county jail system is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may contract for the construction or expansion of jail facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who

is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board. If the board does not select the lowest bid, it shall make a finding stating the reasons that the lowest bid was not selected.

(c) In any county that has agreed to permit the transfer of prisoners or parole violators under Section 2910 or 2910.5 of the Penal Code or of wards under Section 1753.3 of the Welfare and Institutions Code, the board of supervisors may contract for the construction or expansion of the facilities to be used for that purpose without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected.

(d) Proposed construction or expansion of jail or return-to-custody facilities as authorized under subdivision (b) or (c) shall not commence in a county of the third class without the affirmative vote of a majority of the city council of the incorporated city within which the construction or expansion is proposed.

(e) The board of supervisors may waive the requirements of Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code for work performed pursuant to subdivision (b) or (c).

(f) If any county that is under court order to relieve overcrowding in a county juvenile facility, as defined by subdivision (c) of Section 4481 of the Penal Code or in which the chief probation officer certifies that the juvenile detention capacity of the county juvenile facilities is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may contract for

the construction or expansion of county juvenile facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board. If the board does not select the lowest bidder, it shall make a finding stating the reasons that the lowest bidder was not selected.

(g) In a county of the third class in which there are no available courtrooms to accommodate all authorized judicial positions or in which the board of supervisors certifies that there is a significant need to expeditiously construct new court and court support facilities, the board of supervisors may contract for the construction or expansion of court and court support facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected. This subdivision shall remain in effect until December 31, 1994.

SEC. 1.2. Section 20168 of the Public Contract Code is amended to read:

20168. In case of an emergency, the legislative body may pass a resolution by a four-fifths vote of its members declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property. Upon adoption of the resolution, it may expend any sum required in the emergency without complying with this chapter. If notice for bids to let contracts will not be given, the legislative body shall comply with Chapter 2.5 (commencing with Section 22050).

SEC. 1.3. Section 20205.1 of the Public Contract Code is repealed.

SEC. 1.4. Section 20205.1 is added to the Public Contract Code, to read:

20205.1. In case of an emergency, the board shall respond to the emergency pursuant to Chapter 2.5 (commencing with Section 22050) if notice for bids to let contracts will not be given.

SEC. 1.5. Section 20567 of the Public Contract Code is repealed.

SEC. 1.6. Section 20567 is added to the Public Contract Code, to read:

20567. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

SEC. 1.7. Section 20213 of the Public Contract Code is amended to read:

20213. In case of an emergency, the board may, by resolution passed by a four-fifths vote of all its members, declare and determine that public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property, and thereupon proceed to expend or enter into a contract involving the expenditure of any sum needed in the emergency without observance of the provisions requiring contracts, bids, or notice. If notice for bids to let contracts will not be given, the board shall also comply with Chapter 2.5 (commencing with Section 22050).

SEC. 1.8. Section 20223 of the Public Contract Code is amended to read:

20223. In case of an emergency, the board may, by resolution passed by a two-thirds vote of all its members, declare and determine that public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property, and thereupon proceed to expend or enter into a contract involving the expenditure of any sum needed in the emergency without observance of the provisions requiring contracts, bids, or notice. If notice for bids to let contracts will not be given, the board shall also comply with Chapter 2.5 (commencing with Section 22050).

SEC. 2. Section 20233 of the Public Contract Code is amended to read:

20233. In case of an emergency, the board may, by resolution passed by a vote of two-thirds of all its members, declare and determine that public interest and necessity demand the immediate

expenditure of public money to safeguard life, health, property, or the public welfare, and thereupon proceed to expend or enter into a contract involving the expenditure of any sum needed to respond to the emergency without observance of the provisions requiring contracts, bids, or notice. If notice for bids to let contracts will not be given, the board shall also comply with Chapter 2.5 (commencing with Section 22050).

SEC. 2.1. Section 20253 of the Public Contract Code is amended to read:

20253. In case of an emergency, the board may, by resolution passed by a four-fifths vote of all its members, declare and determine that public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property, and thereupon proceed to expend or enter into a contract involving the expenditure of any sum needed in the emergency without observance of the provisions requiring contracts, bids, or notice. If notice for bids to let contracts will not be given, the board shall also comply with Chapter 2.5 (commencing with Section 22050).

SEC. 2.2. Section 20273 of the Public Contract Code is amended to read:

20273. In case of an emergency, the board may, by resolution passed by a two-thirds vote of all its members, declare and determine that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property, and thereupon proceed to expend or enter into a contract involving the expenditure of any sum needed in the emergency without observance of the provisions requiring contracts, bids, or notice. If notice for bids to let contracts will not be given, the board shall also comply with Chapter 2.5 (commencing with Section 22050).

SEC. 2.3. Section 20283 of the Public Contract Code is amended to read:

20283. In case of an emergency, the board may, by resolution passed by a four-fifths vote of all its members, declare and determine that public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property and thereupon proceed to expend or enter into a contract involving the expenditure of any sum needed in the emergency without observance of the provisions requiring contracts, bids, or notice. If notice for bids to let contracts will not be given, the board shall also comply with Chapter 2.5 (commencing with Section 22050).

SEC. 2.4. Section 20293 of the Public Contract Code is amended to read:

20293. In case of an emergency, the board may, by resolution passed by a majority vote of all its members, declare and determine that public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property and thereupon proceed to expend or enter into a contract involving the expenditure of any sum needed in the emergency without observance of the provisions requiring contracts, bids, or notice. If

notice for bids to let contracts will not be given, the board shall also comply with Chapter 2.5 (commencing with Section 22050).

SEC. 2.5. Section 20313 of the Public Contract Code is amended to read:

20313. In case of an emergency, the board may, by resolution passed by a four-fifths vote of all its members, declare and determine that public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property, and thereupon proceed to expend, or enter into a contract involving the expenditure of, any sum needed in the emergency without observance of the provisions requiring contracts, bids, or notice. If notice for bids to let contracts will not be given, the board shall also comply with Chapter 2.5 (commencing with Section 22050).

SEC. 2.6. Section 20331 of the Public Contract Code is amended to read:

20331. Contracts for the construction of transit works or transit facilities in excess of ten thousand dollars ($10,000) shall be awarded to the lowest responsible bidder after competitive bidding, except in emergency declared by the vote of seven members of the board. In the case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

SEC. 2.7. Section 20586 of the Public Contract Code is repealed.

SEC. 4. Section 20586 is added to the Public Contract Code, to read:

20586. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

SEC. 5. Section 20604 of the Public Contract Code is repealed.

SEC. 6. Section 20604 is added to the Public Contract Code, to read:

20604. In case of an emergency, if notice for bids to let contracts will not be given, the district shall comply with Chapter 2.5 (commencing with Section 22050).

SEC. 7. Section 20635 of the Public Contract Code is repealed.

SEC. 8. Section 20635 is added to the Public Contract Code, to read:

20635. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

SEC. 8.5. Section 20645 of the Public Contract Code is repealed.

SEC. 8.6. Section 20645 is added to the Public Contract Code, to read:

20645. In the case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

SEC. 9. Section 20685 of the Public Contract Code is amended to read:

20685. (a) All contracts for the construction of any unit of work,

except as provided in this article, estimated to cost in excess of ten thousand dollars ($10,000), shall be let to the lowest bidder after competitive bidding. The board shall have the right to reject any bid, in which case the board may call for new bids.

(b) In the event no proposals are received, or where the estimated cost of the work does not exceed the sum of ten thousand dollars ($10,000), or where the work consists of emergency work, the board of directors may have that work done by force account. In the case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district shall have the power to purchase in the open market without calling for bids, materials and supplies for use in the work either under contract, or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds ten thousand dollars ($10,000), without calling for bids and awarding the contract to the lowest responsible bidder.

SEC. 10. Section 20736 of the Public Contract Code is amended to read:

20736. (a) All construction authorized under this article that exceeds two thousand five hundred dollars ($2,500) shall be awarded upon competitive bidding. Notice of the proposed letting of such a contract shall be published pursuant to Section 6066 of the Government Code in a newspaper of general circulation in the district or, if there is none, of general circulation in the county, the first publication to be at least two weeks prior to the opening of bids. The notice inviting bids shall set a date for the opening of bids. The contract shall be awarded to the lowest responsible bidder. In its discretion, the board may reject any bids presented and readvertise. If two or more bids are the same and the lowest, the board may accept the one it chooses. If no bids are received, the board may have the work done directly by purchasing the materials and hiring the labor.

(b) If all bids are rejected, the board may adopt a resolution, by four-fifths vote, declaring that the work can be performed more economically by hiring day labor, or that the materials or supplies can be furnished at a lower price in the open market, and may have the work done in the manner stated in the resolution in order to take advantage of this lower cost.

(c) If there is an emergency, the board may, by four-fifths vote adopt a resolution declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property, and expend any sum required in the emergency without submitting the expenditure to the bidding procedure set forth. If notice for bid to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(d) The board may negotiate with the government of the United States or any department or agency thereof, the state or any department or agency thereof, any local public agency for the purpose of assisting the district in the performance of any of the work authorized by this article and, without advertising for bids, may cause the district to contribute to the United States or any local public agency all or any portion of the estimated cost of any work authorized by this article which is to be done by or under contract with the United States or any local public agency.

SEC. 11. Section 20751.1 of the Public Contract Code is amended to read:

20751.1. In case of an emergency, the board may, by resolution passed by a four-fifths vote of all of its members, declare and determine that public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property, and thereupon proceed to expend any sum or enter into a contract involving the expenditure of any sum needed in the emergency without observance of the provisions requiring contracts, bids, or notice. If notice for bid to let contracts will not be given, the board shall also comply with Chapter 2.5 (commencing with Section 22050).

SEC. 12. Section 20806 of the Public Contract Code is amended to read:

20806. If there is an emergency, or if it is necessary to do emergency work to prepare for national or local defense, the district board may pass a resolution by a four-fifths vote of its members declaring that the public interest and necessity demand the immediate expenditure of district funds to safeguard life, health, or property. Upon adoption of the resolution, it may expend any sum required in the emergency without complying with this article. If notice for bids to let contracts will not be given, the board shall also comply with Chapter 2.5 (commencing with Section 22050).

SEC. 13. Section 20812 of the Public Contract Code is amended to read:

20812. (a) A district board may contract for special services. These contracts shall be with persons specially trained, experienced, expert, and competent to perform the special services. The special services shall be limited to the fields of accounting, administration, ambulance, architecture, custodial, economics, engineering, finance, insurance, labor relations, law, maintenance, mechanics, medicine, planning, science, technology, and other services which are incidental to the operation of the district.

(b) In the case of a district which has a final budget in excess of one million dollars ($1,000,000), the district shall follow the contracting and purchasing procedures which apply to the county government of its principal county or the procedures in subdivision (c).

(c) In the case of a district which has a final budget less than one million dollars ($1,000,000), the district shall follow the procedures of

this subdivision.

(1) When the expenditure required for the service contract exceeds ten thousand dollars ($10,000), it shall be contracted for and let to the lowest responsible bidder. If two or more bids are the same and the lowest, the district board may accept the one it chooses.

(2) The notice inviting bids shall set a date for the opening of bids. The first publication or posting of the notice shall be at least 10 days before the date of opening the bids. Notice shall be published at least twice, at least five days apart, in a newspaper of general circulation in the district, or if there is none, it shall be posted in at least three public places in the district. The notice shall distinctly state the service to be performed.

(3) The district board may reject any bids. If the district board rejects all bids, it may either readvertise or adopt a resolution, by two-thirds vote, declaring that the service can be performed more economically by the district's employees or obtained at a lower price in the open market. Upon adoption of the resolution, the district board may undertake the service contract without further complying with this section.

(4) If no bids are received, the district board may undertake the service contract without further complying with this section.

(5) In the case of an emergency, the district board shall respond to the emergency pursuant to Chapter 2.5 (commencing with Section 22050) if notice for bids to let contracts will not be given.

SEC. 14. Section 20914 of the Public Contract Code is amended to read:

20914. (a) The district shall advertise, pursuant to Section 6066 of the Government Code, for contracts for all vessel repair, maintenance, and alteration work whenever the estimated expenditure exceeds twenty thousand dollars ($20,000), and for all other construction, repair, maintenance, and alteration work and all similar work, and for all insurance purchased by the district for any reason, except physical damage insurance, employee benefit insurance, liability insurance, or worker's compensation insurance, whenever the estimated expenditure exceeds five thousand dollars ($5,000), as follows:

(1) In at least one newspaper and not more than three newspapers designated by the general manager, which are published in any one county or portion of a county within the district.

(2) By publication for two consecutive insertions in a trade paper of general circulation, published no more than one week apart either in the City of Los Angeles or the City and County of San Francisco, devoted primarily to the dissemination of contract news among contracting firms. The district shall publicly open the bids and award the contract to the lowest responsible bidder.

(b) In case of emergency, work may be contracted without advertising or competitive bidding.

(c) If notice for bids to let contracts will not be given, the district shall comply with Chapter 2.5 (commencing with Section 22050).

SEC. 15. Section 20918 of the Public Contract Code is amended to read:

20918. In case of an emergency, the board may, by resolution passed by a two-thirds vote of all of its members, declare and determine that public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property, and thereupon proceed to expend or enter into a contract involving the expenditure of any sum needed in such emergency without observance of the provisions requiring contracts, bids, or advertisement. If notice for bid to let contracts will not be given, the board shall also comply with Chapter 2.5 (commencing with Section 22050).

SEC. 16. Section 20926 of the Public Contract Code is amended to read:

20926. (a) In the event of any emergency, the board may negotiate and award a contract for construction of work to prevent damage or repair damaged works without advertising for bids and expend any sum reasonably required in the emergency. If notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(b) Notwithstanding any other provision of this section, the board or any trustee authorizing or contracting for work in an emergency shall, if practicable, informally solicit bids or requests for proposals to seek to obtain the best terms possible, including the lowest price term, given the urgent circumstances of the emergency, and, promptly after the emergency ends, shall document the circumstances of the emergency and the bid or proposal accepted.

(c) Work to further reconstruct or rehabilitate damaged works after the emergency ends shall be subject to the requirements of this article.

SEC. 17. Section 20931 of the Public Contract Code is amended to read:

20931. (a) The board shall annually have prepared, and shall adopt, plans and specifications of all necessary repairs to the levees of the district and of any new levees to be constructed and all other works of improvement for the benefit of the district, and shall divide the work into convenient sections. The plans and specifications shall be filed in the office of the board not later than the first day of July of each year and shall be subject to inspection by any interested person for at least two weeks prior to the letting of any contract for work in accordance with those plans and specifications. If the cost of repair or construction in any one of the sections will exceed five hundred dollars ($500) the board must, not later than the first day of July in each year, give notice by publication at least once a week for two consecutive weeks in one or more newspapers printed and published in Sutter County, that sealed proposals will be received and opened at the office of the board, at a time specified in the notice, for the construction of repairs, new levees, and other works of improvement in each separate section of work, and for the whole

work, in accordance with the plans and specifications. At the time and place specified in the notice the board shall publicly open the bids and let the contract or contracts to the lowest responsible bidder or bidders; provided, however, that the board may reject any bid. If any or all bids are rejected the board shall immediately readvertise for bids, as in the first instance, for work that has not been let and upon the opening and consideration of those new bids the board shall have the right to reject any of them and have the work done by day labor. Every person, firm or corporation to whom a contract is awarded shall enter into a bond with sufficient sureties, to be approved by the board, equal to one-half of the contract price, conditioned for the faithful performance of the contract in accordance with the plans and specifications.

(b) In cases of emergency, the board may, by unanimous consent of all the members, proceed at once to replace or repair any and all levees in the district without notice. If notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) In case of vacancy in the office of any director or directors of the district by reason of death, resignation, or other cause (whether the same shall occur before or after the effective date of this act), the board of supervisors of Sutter County shall have power to fill the same by appointment. A person so appointed to fill such a vacancy shall hold office until the first Monday in March following the next election in the district at which directors are to be elected and until his or her successor has been elected.

SEC. 18. Section 20941 of the Public Contract Code is amended to read:

20941. (a) All work done in any district shall be ordered by the board of supervisors of the county in which the district is located and shall be under the direction of the county surveyor or county engineer. All work which exceeds an estimated cost of one thousand dollars ($1,000) shall be advertised and let to the lowest bidder; provided, however, that at the time of an emergency the board of supervisors may order emergency work done without advertising for bids. If notice for bids to let contracts will not be given, the board of supervisors shall comply with Chapter 2.5 (commencing with Section 22050).

(b) As soon as the district is formed, the board shall cause a survey of the contemplated improvements to be made, or adopt a survey already made, and shall also cause a map of the survey, and plans and specifications showing the improvements in detail, to be prepared, and they shall adopt those surveys, maps, plans, and specifications, and thereafter all improvements shall be made in accordance with the surveys, maps, plans, and specifications so adopted; provided, that at any time after the adoption of said surveys, maps, plans, and specifications, and before the commissioner's report of assessment of benefits and award of damages has been finally adopted and confirmed by the board, the board may rescind their action in

adopting those surveys, maps, plans, and specifications, and may modify the same or adopt others in their place, in which case a new assessment shall be made, or may, by a four-fifths vote of the members, abandon the contemplated improvement and dissolve the protection district, in which case the expenses already incurred on behalf of the district shall be a county charge.

SEC. 19. Section 20961 of the Public Contract Code is amended to read:

20961. No levees, dikes, or other works for the benefit of the district may be constructed or repaired except on the order of the board of trustees of the district and when the repair or construction will exceed five hundred dollars ($500) the work may be performed only under a contract let, after reasonable notice given by the board of trustees by publishing the notice at least once a week for two weeks in a newspaper published and circulated in the county and designated by the board of trustees. All bids shall be sealed and shall be opened at the time specified in the notice, and the contract shall be awarded to the lowest responsible bidder. The board may, however, reject any and all bids. The contract and bond for its performance must be entered into and approved by the board of trustees, except, however, in cases of emergency, by the unanimous consent of the whole board of trustees they may proceed at once to replace or repair levees, dikes, or other works without notice. In case of emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). Prior to the publication of the notice of the letting of any contract for the erection or repair of dikes, levees, or other works, the board of trustees shall have prepared by a competent engineer, plans and specifications and working details of the work, that shall be adopted by the board of trustees and filed in the office of the board and shall be subject to inspection by any person for at least two weeks prior to the date of the letting of the contract. The board of trustees shall appoint an engineer to supervise the construction, repair, or other works to be done under the plans and specifications and no claim shall be allowed for any work done under any contract let under those plans and specifications without a certificate being first filed in the office of the board of trustees and in the office of the clerk of the board of supervisors of the county signed by the engineer, certifying that the work has been completed and constructed according to the plans and specifications and the terms of the contract. The engineer shall be paid the compensation agreed upon by the board of trustees and the compensation shall be paid in the same manner as other claims against the district.

SEC. 20. Section 20991 of the Public Contract Code is amended to read:

20991. All contracts for any improvement or unit of work, except as provided in this article, estimated to cost in excess of twenty-five thousand dollars ($25,000), shall be let to the lowest responsible bidder in the manner provided in this article. The board of

supervisors of the district shall advertise by five or more insertions in a daily newspaper of general circulation, or by two or more insertions in a weekly newspaper of general circulation, printed and published in the district, inviting sealed proposals for the construction of the improvement or work. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds, to be approved by the board, conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material. The bonds shall contain the terms and conditions set forth in Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code and shall be subject to the provisions of that chapter. The board shall have the right to reject any bid not suitable to the best interests of the district. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed ten thousand dollars ($10,000), or the work consists of channel protection, dam protection, temporary work, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. Emergency work may also be done by negotiated contract without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

SEC. 21. Section 21020.2 of the Public Contract Code is amended to read:

21020.2. All contracts for any improvement or unit of work, except as provided in this article, estimated to cost in excess of ten thousand dollars ($10,000), shall be let to the lowest responsible bidder in the manner provided in this article. The board of supervisors of the district shall advertise by five or more insertions in a daily newspaper of general circulation, or by two or more insertions in a weekly newspaper of general circulation, printed and published in the district, inviting sealed proposals for the construction or work of the proposed improvement or work and may let by contract separately, any part of the work or improvement. The board shall have the right to reject any bids not suitable to the best interests of the district. In the event all proposals are rejected, or no proposals are received pursuant to advertising, or the estimated cost of the work does not exceed ten thousand dollars ($10,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district shall have power to purchase in the open market, without advertising for bids, materials and supplies for use in any work being done by it either under contract or by force account whenever the estimated costs of the materials or supplies do not exceed five thousand dollars ($5,000); and provided further, that in

case of emergency work, the district shall have the power to purchase in the open market, without advertising for bids therefor, materials and supplies for use in any work, even though the cost thereof should exceed five thousand dollars ($5,000).

SEC. 22. Section 21024 of the Public Contract Code is amended to read:

21024. Emergency work, found by the board of supervisors to be necessary, may be done by negotiated contract without advertising for bids. If notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

SEC. 23. Section 21031 of the Public Contract Code is amended to read:

21031. (a) In all work of improvement or repair of any of the works or property of the district and in the furnishing of materials or supplies therefor, when the expenditures required exceed one thousand five hundred dollars ($1,500), the work shall be done by contract, and shall be let to the lowest responsible bidder, after notice by publication in a newspaper of general circulation published in the district for at least two insertions in a weekly newspaper or at least 10 insertions in a daily newspaper; such notices shall state the work contemplated or the materials or supplies required, or both. The board of trustees may reject any bid presented and readvertise in their discretion. The board may declare and determine that in its opinion the work in question can be performed more economically by day labor or the materials or supplies can be furnished at a lower price in the open market, and they may proceed to have the work done or the materials purchased without further observance of the foregoing provisions of this section.

(b) In case of an emergency, the board of trustees may declare a state of great public emergency and proceed to have all necessary work done and materials and supplies furnished without further observance of the foregoing provisions of this section. If notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) None of the foregoing provisions of this section applies to work done by contract with the United States, the State of California, or any political subdivision, or public agency thereof. Any work or improvement provided for in this act may be located, constructed and maintained in, along, or across any railroad, public road, or highway in the County of Sacramento, in a manner that ensures security for life and property. The board of trustees shall restore or cause to be restored the road or highway to its former state as near as possible to preserve its usefulness.

SEC. 24. Section 21043 of the Public Contract Code is repealed.

SEC. 24.1. Section 21043 is added to the Public Contract Code, to read:

21043. (a) Contracts may be let or work undertaken without advertising for bids in an emergency.

(b) In case of an emergency, if notice for bids to let contracts will

not be given, the board of supervisors shall comply with Chapter 2.5 (commencing with Section 22050).

SEC. 24.2. Section 21061 of the Public Contract Code is amended to read:

21061. (a) All contracts for any improvement or unit of work, except as provided in this article, estimated to cost in excess of twenty-five thousand dollars ($25,000), shall be let to the lowest responsible bidder in the manner provided in this article.

(b) The board of supervisors of the district shall advertise by five or more insertions in a daily newspaper of general circulation, or by two or more insertions in a weekly newspaper of general circulation, printed and published in the district, inviting sealed proposals for the construction of the improvement or work. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds, to be approved by the board, conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code and to be subject to that chapter.

(c) The board may also reject any bid not suitable to the best interests of the district. If all proposals are rejected or no proposals are received pursuant to advertisement therefor, or the work consists of channel protection, dam protection, temporary work, maintenance work, or of emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. Emergency work may also be done by negotiated contract without advertising for bids or requiring bonds. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(d) The board of supervisors may authorize the flood control engineer to execute changes for any contract in an amount not to exceed five thousand dollars ($5,000) for contracts of fifty thousand dollars ($50,000) or less, or 10 percent for contracts over fifty thousand dollars ($50,000), but in no event to exceed a net additional total of twenty-five thousand dollars ($25,000).

SEC. 25. Section 21072 of the Public Contract Code is repealed.

SEC. 26. Section 21072 is added to the Public Contract Code, to read:

21072. (a) Emergency work may be done by negotiated contract without advertising for bids.

(b) In case of an emergency, if notice for bids to let contracts will not be given, the board of supervisors shall comply with Chapter 2.5 (commencing with Section 22050).

SEC. 27. Section 21081 of the Public Contract Code is amended to read:

21081. All contracts for any improvement or unit of work, when the cost, according to the estimate of the engineer, will exceed five

thousand dollars ($5,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract for the whole or it may divide such work into severable parts by separate contracts, as stated in such call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of such work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

SEC. 28. Section 21091 of the Public Contract Code is amended to read:

21091. All contracts for any improvement or unit of work, except as otherwise provided in this act, estimated to cost in excess of fifteen thousand dollars ($15,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board of supervisors of the district shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction of the improvement or work before any contract is made, and may let by contract separately any part of the work or improvement. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall contain the terms and conditions set forth in Sections 10223 and 10224 of the Public Contract Code and Section 3248 of the Civil Code and be subject to those sections. The board shall also have the right to reject any bid.

If all proposals are rejected or no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed fifteen thousand dollars ($15,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market, without advertising for bids, materials and supplies for use in any improvement or unit of work either under contract or by force account.

SEC. 29. Section 21101 of the Public Contract Code is amended to read:

21101. All contracts for any improvement or unit of work, when the cost, according to the estimate of the engineer, will exceed five thousand dollars ($5,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract shall be made. The call for bids shall state whether the work is to be performed as a unit or is to be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract for the whole as a unit or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district shall have the power to purchase in the open market without advertising for bids, materials and supplies for use in any work either under contract or by force account.

SEC. 30. Section 21111 of the Public Contract Code is amended

to read:

21111. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of ten thousand dollars ($10,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board of directors of the agency shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the agency's jurisdiction inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material. The faithful performance bond shall contain terms and conditions as the board may specify, and the payment bond shall be subject to the provisions of, and shall contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, as applicable. The board shall also have the right to reject any bid, in which case the board may advertise for new bids. In the event no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed ten thousand dollars ($10,000), or the work consists of emergency work, the board of directors by unanimous vote of all members present may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The agency may purchase in the open market, and may authorize the Purchasing Agent of the County of Santa Barbara to purchase, without advertisement for bids, materials and supplies for use in any work either under contract or by force account.

(b) If the work to be performed by or on behalf of the agency does not involve an expenditure of ten thousand dollars ($10,000) or more, or if the work consists of emergency work, the agency may require a faithful performance bond. The agency may require a payment bond on work performed on behalf of the agency which does not involve an expenditure of more than ten thousand dollars ($10,000).

SEC. 31. Section 21121 of the Public Contract Code is amended to read:

21121. (a) All contracts for any improvement or unit of work, if the cost according to the estimate of the engineer, exceeds five thousand dollars ($5,000), shall be let to the lowest responsible bidder or bidders.

(b) The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the agency.

(c) The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and

published in the territory of the agency inviting sealed proposals for the construction or performance of the improvement or work before any contract is entered into. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the agency.

(d) The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material in connection with the contract. The bonds shall contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code and are subject to the provisions of that title.

(e) The board may reject any bid. The board of supervisors may, without advertising for bids, have the work done by force account if any of the following requirements are met:

(1) All the projects are rejected.

(2) No proposals are received in response to the advertisement.

(3) The estimated cost of the work does not exceed five thousand dollars ($5,000).

(4) The work consists of channel protection, maintenance work, or emergency work. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(f) The agency may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

(g) The Monterey County Board of Supervisors may grant to the board of directors, appointed pursuant to Section 49 of the Monterey County Water Resources Agency Act (Chapter 1159 of the Statutes of 1990), any of the powers or duties granted to the Monterey County Board of Supervisors by this section.

SEC. 32. Section 21131 of the Public Contract Code is amended to read:

21131. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand five hundred dollars ($2,500) shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three placements in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract is made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for

labor and material in connection therewith, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, and to be subject to the provisions of that title. The board may reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement therefor, or where the work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work authorized and required under circumstances referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars ($2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) This section does not apply to a contract entered into with the United States or the State of California or other governmental agency under the authority of Section 3 of Chapter 2126 of the Statutes of 1959, or to a contract authorized by a vote of the electorate of the district.

(e) The district may rent or otherwise contract for equipment with or without an operator and use it on works of the district, if the contract is approved by the board.

SEC. 33. Section 21141 of the Public Contract Code is amended to read:

21141. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand dollars ($2,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, and to be subject to the provisions of that title. The board shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to

advertisement, where the estimated cost of the work does not exceed the sum of two thousand dollars ($2,000), or where the work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market, without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars ($2,500), without advertising for bids and awarding the contract therefor to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3, or to a contract authorized by a vote of the electorate of the district.

SEC. 34. Section 21151 of the Public Contract Code is amended to read:

21151. All contracts for any improvement or unit of work when the cost according to the estimate of the engineer will exceed twenty-five thousand dollars ($25,000), with or without the furnishing of materials or supplies, shall be let to the lowest responsible bidder or bidders in the manner provided in this article. Construction of improvements or works shall not be staged to avoid the bidding process. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The board shall invite the bids by publishing a notice of the call for bids pursuant to Section 6062 or 6066 of the Government Code in a newspaper of general circulation in the county. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid. In the event the engineer's estimate is twenty-five thousand dollars

($25,000) or less, or in the event no proposals are received pursuant to advertisement therefor, or in the event the work consists of channel protection or maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may acquire in the open market without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose.

SEC. 35. Section 21161 of the Public Contract Code is amended to read:

21161. (a) Any improvement or unit of work not performed by district personnel and estimated by the engineer to cost in excess of five thousand dollars ($5,000) shall be done by contract. All contracts shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit for the whole thereof or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

(b) The provisions of this section requiring competitive bidding and the award of contracts to the lowest responsible bidder are

inapplicable to the extent the improvement or unit of work is to be performed on its own facilities by a public utility subject to the jurisdiction of the California Public Utilities Commission.

SEC. 36. Section 21171 of the Public Contract Code is amended to read:

21171. (a) All contracts for any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed two thousand dollars ($2,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit for the whole thereof or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract as a unit or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid.

(b) In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed two thousand dollars ($2,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvements, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars ($2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 37. Section 21181 of the Public Contract Code is amended to read:

21181. All contracts for any improvement or unit of work when

the cost according to the estimate of the engineer, will exceed four thousand dollars ($4,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call in the district pursuant to Section 6066 of the Government Code inviting sealed proposals for the construction or performance of the improvement or before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid.

(b) In the event no proposals are received pursuant to advertisement or the estimated cost of the work does not exceed four thousand dollars ($4,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by the combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may acquire in the open market, without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars ($2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 65. Section 21182 is added to the Public Contract Code, to read:

21182. In case of an emergency, the board of supervisors shall respond to the emergency pursuant to Chapter 2.5 (commencing with Section 22050) if notice for bids to let contracts will not be given.

SEC. 66. Section 21191 of the Public Contract Code is amended to read:

21191. (a) All contracts for any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed ten thousand dollars ($10,000), shall be let to the lowest responsible

bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code and to be subject to the provisions of that chapter. The board shall also have the right to reject any bid.

(b) In the event no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed ten thousand dollars ($10,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may acquire in the open market, without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds five thousand dollars ($5,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 39. Section 21196 of the Public Contract Code is amended to read:

21196. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand five hundred dollars ($2,500) shall be let to the lowest responsible bidder in the manner provided in this article. The board of directors of the district shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract is made, and may let by contract separately any part of the work. The board shall require the successful bidder to file

with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code and to be subject to the provisions of this title. The board shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed two thousand five hundred dollars ($2,500), or the work consists of emergency work, the board of directors by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market, without advertisement for bids, materials and supplies for use in any work either under contract or by force account.

(c) The provisions of this section have no application to a contract entered into with the United States under the authority of the Solano County Flood Control and Water Conservation District Act, or to a contract authorized by a vote of the electorate of the district.

SEC. 40. Section 21203 of the Public Contract Code is amended to read:

21203. If all proposals are rejected or no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed five thousand dollars ($5,000), or where the work consists of channel protection, maintenance work, or emergency work, the board, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

SEC. 41. Section 21212 of the Public Contract Code is amended to read:

21212. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of three thousand dollars ($3,000), shall be let to the lowest responsible bidder in the manner provided in this article. The board of directors of the agency shall advertise pursuant to Section 6066 of the Government Code in a newspaper of general circulation published in the agency's jurisdiction inviting sealed proposals for the construction of the work before any contract is made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful

performance of the contract and upon the payment of any claims for labor and material and containing the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed three thousand dollars ($3,000), or the work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 6 of Chapter 10 of the Statutes of the 1952 First Extraordinary Session, or to a contract authorized by a vote of the electorate of the agency.

SEC. 42. Section 21221 of the Public Contract Code is amended to read:

21221. (a) In all work of improvement or repair of any of the works or property of the district and in the furnishing of materials or supplies, when the expenditures exceed four thousand dollars ($4,000), the work shall be done by contract, and shall be let to the lowest responsible bidder, after notice by publication in the district pursuant to Section 6066 of the Government Code and by posting the notice for at least five days at or near the door of the meeting place of the board of trustees prior to the date set for opening bids; the notices shall distinctly state the work contemplated or the materials or supplies required; provided the board of trustees may reject any bid presented and readvertise and post in their discretion, and provided further, that the board may declare and determine that in its opinion the work in question can be performed more economically by day labor or the materials or supplies can be furnished at a lower price in the open market, and they may proceed to have the work done or the materials purchased without further observance of the provisions of this section.

(b) In case of an emergency, the board of trustees may declare a state of great public emergency and proceed to have all necessary work done and materials and supplies furnished without regard to this section. Any work or improvement provided for in this act may be located, constructed, and maintained in, along, or across any public road or highway in the County of Solano, in a manner that ensures security for life and property, but the board of trustees shall restore, or cause to be restored, the road or highway to its former state as near as possible, to preserve its usefulness. If notice for bids

to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

SEC. 43. Section 21231 of the Public Contract Code is amended to read:

21231. Any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed five thousand dollars ($5,000), shall be done by contract let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract will be let as a single unit, or will be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call pursuant to Section 6066 of the Government Code in the district, inviting sealed proposals for the construction or performance of the improvement or before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into separate specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid. In the event no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may acquire in the open market without advertising for bids, materials, equipment and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in the preceding sentence, may not be purchased if the cost exceeds five thousand dollars ($5,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 44. Section 21241 of the Public Contract Code is amended to read:

21241. All contracts for any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed two thousand dollars ($2,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit

or shall be divided into severable parts, or both, according to the best interests of the zone. The board shall call for bids and advertise the call pursuant to Section 6066 of the Government Code in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid. In the event no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed two thousand dollars ($2,000), or the work consists of emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The board may acquire in the open market, without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in the preceding sentence, may not be purchased if the cost exceeds two thousand five hundred dollars ($2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 45. Section 21251 of the Public Contract Code is amended to read:

21251. All contracts for any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed five thousand dollars ($5,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call pursuant to Section 6063 of the Government Code in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call,

according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market without advertising for bids, materials and supplies for use in any work either under contract or by force account.

SEC. 46. Section 21261 of the Public Contract Code is amended to read:

21261. All contracts for any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed two thousand dollars ($2,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the work, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call pursuant to Section 6066 of the Government Code in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed two thousand dollars ($2,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts

will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

SEC. 47. Section 21271 of the Public Contract Code is amended to read:

21271. All improvement and units of work to be performed by or for the district shall be performed in accordance with the following procedures and requirements:

(a) If the work consists of the protection or maintenance of channels, storm drains, dams or other flood control works, or emergency work, the board of directors may, without advertising for bids therefor, have the work done by day labor under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(b) If the work consists of the construction of new flood control channels, storm drains, dams, or other unit or units of work, and if the cost of the work, according to the estimate of the engineer, will exceed ten thousand dollars ($10,000), and if the work is not the type of work referred to in subdivision (a) or (c) of this section, the new construction shall be performed under a contract or contracts which shall be let to the lowest responsible bidder or bidders in the manner provided in subdivision (d) of this section.

(c) If the work consists of the maintenance or alteration of existing facilities, including electrical, painting, and roofing work, and if the cost of labor and materials for the work according to the engineer's estimate, will exceed three thousand five hundred dollars ($3,500), and if the work is not the type of work referred to in subdivision (a) or (b) of this section, the maintenance and alteration work shall be performed under a contract or contracts which shall be let to the lowest responsible bidder or bidders in the manner provided in subdivision (d) of this section.

(d) The board shall first determine whether the work shall be let as a single unit or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call pursuant to Section 6066 of the Government Code in the district inviting sealed proposals for the construction or performance of the work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable, specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bond to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material. The faithful

performance bond shall contain the terms and conditions as the board may specify, and the payment bond shall contain the terms and conditions set forth in, and shall be subject to, the provisions of Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code. If the work to be performed on behalf of the district does not involve an expenditure of fifteen thousand dollars ($15,000) or more, the district may require a faithful performance bond or a payment bond. The board shall also have the right to reject any bid.

(e) If no proposals are received pursuant to advertisement, or if the estimated cost of work of the type referred to in subdivision (b) of this section does not exceed ten thousand dollars ($10,000), or if the estimated cost of work of the type referred to in subdivision (c) of this section does not exceed three thousand five hundred dollars ($3,500), the board of directors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by combination of the two. If any change or alteration in a contract awarded under the provisions of this section for work of the type referred to in subdivision (b) or (c) is deemed necessary and the cost does not exceed 10 percent of the original contract price, the board may authorize the contractor to proceed with the change or alteration without the formality of obtaining bids.

(f) Notwithstanding the foregoing provisions, the district shall have the power to acquire in the open market, and may authorize the Purchasing Agents of the County of Santa Barbara to acquire in the open market, without advertising for bids, materials, equipment and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (a) of this section, may not be purchased without advertising for bids and awarding the contract to the lowest responsible bidder if the cost exceeds two thousand five hundred dollars ($2,500), unless the purchase is made by the county purchasing agent at the request of the district, in which case the cost shall not exceed six thousand five hundred dollars ($6,500).

SEC. 48. Section 21290 of the Public Contract Code is repealed.

SEC. 49. Section 21290 is added to the Public Contract Code, to read:

21290. (a) By the unanimous consent of the whole board in cases of emergency, except for compliance with subdivision (b), the board may proceed at once to replace or repair any and all structures without adopting the plans, specifications, strain sheets, or working details or giving notice for bids to let contracts. The work may be done by day labor under the direction of the board, by contract, or by a combination of the two. If the work is done wholly or in part by contract, the contractor shall be paid the actual cost of material and labor expended by him or her in doing the work, plus not more than 15 percent to cover all profits, supervisions, use of machinery and tools, and other expenses. No more than the lowest current market prices shall be paid for materials.

(b) In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

SEC. 50. Section 21311 of the Public Contract Code is amended to read:

21311. (a) All contracts for any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed two thousand dollars ($2,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract for the whole as a unit or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid.

(b) In the event no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed two thousand dollars ($2,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may acquire in the open market, without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), shall not be purchased if the cost exceeds two thousand five hundred dollars ($2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 51. Section 21321 of the Public Contract Code is amended to read:

21321. All contracts for any improvement or unit of work, when

the cost according to the estimate of the engineer will exceed five thousand dollars ($5,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency's jurisdiction, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code. The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). In the event that no proposals are received, or if only one responsive proposal is received, the board may negotiate a contract for construction or performance of the work or improvement or substantially similar work or improvement; provided, that if only one responsive proposal is received, the contract must be negotiated with the bidder. The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account. Sections 4300 to 4305, inclusive, of the Government Code do not apply to the agency's Middle Fork American River Project. The provisions of this section apply to all proposals or contracts whether or not received or entered into prior to the effective date of the amendment of this provision made at the 1963 Regular Session of the Legislature.

SEC. 52. Section 21331 of the Public Contract Code is amended to read:

21331. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of three thousand five hundred dollars ($3,500) shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall

require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, and to be subject to the provisions of that title. The board shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, where the estimated cost of the work does not exceed five thousand dollars ($5,000), or where the work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market, without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds five thousand dollars ($5,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3 of Chapter 1280 of the Statutes of 1957, or to a contract authorized by a vote of the electorate of the district.

SEC. 53. Section 21341 of the Public Contract Code is amended to read:

21341. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of five thousand dollars ($5,000) shall be let to the lowest responsible bidder. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published by the agency inviting sealed proposals for the construction of the work before any contract is made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, and to be subject to the provisions of that title. The board shall also have the right to reject any bid, in which case the board may advertise for new bids. In the event no proposals are received pursuant to advertisement or where the estimated cost of the work does not exceed five thousand dollars ($5,000), or where the work consists of emergency work, the board,

by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The agency may purchase in the open market, without advertisement for bids, materials and supplies for use in any work either under contract or by force account.

(b) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 59 of Chapter 1512 of the Statutes of 1957, or to a contract authorized by a vote of the electorate of the agency.

SEC. 54. Section 21351 of the Public Contract Code is amended to read:

21351. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars ($5,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published by the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code. The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The board may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account. In awarding any contract or authorizing any work, the board shall comply with the provisions of Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code.

SEC. 55. Section 21361 of the Public Contract Code is amended to read:

21361. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars ($5,000), shall be let to the lowest responsible

bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency's jurisdiction, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code. The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

SEC. 56. Section 21371 of the Public Contract Code is amended to read:

21371. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars ($5,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency's jurisdiction, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code. The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work

consists of emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

SEC. 57. Section 21381 of the Public Contract Code is amended to read:

21381. All contracts for any improvement or unit of work, except as provided in this article, estimated to cost in excess of five thousand dollars ($5,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board of supervisors of the district shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction of the improvement or work before any contract shall be made, and may let by contract separately any part of said work or improvement. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market without advertising for bids, materials and supplies for use in any work either under contract or by force account.

SEC. 58. Section 21391 of the Public Contract Code is amended to read:

21391. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand dollars ($2,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district, inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract

and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, and to be subject to the provisions of that title. The board shall also have the right to reject any and all bids, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement therefor, where the estimated cost of the work does not exceed two thousand dollars ($2,000), or where the work consists of emergency work necessary in order to protect life and property, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars ($2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3 of Chapter 2114 of the Statutes of 1959, or to a contract authorized by a vote of the electorate of the district.

SEC. 59. Section 21401 of the Public Contract Code is amended to read:

21401. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand dollars ($2,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, and to be subject to the provisions of that title. The board shall also have the right to reject any bids, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, where the estimated cost of the work does not exceed two thousand dollars ($2,000), or where work consists of emergency

work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars ($2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3 of Chapter 2121 of the Statutes of 1959, or to a contract authorized by a vote of the electorate of the district.

SEC. 60. Section 21411 of the Public Contract Code is amended to read:

21411. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars ($5,000) shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency's jurisdiction, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code. The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). In that event a majority vote of all board members shall be required. The board may purchase in the open market, without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

SEC. 60.5. Section 21421 of the Public Contract Code is amended

to read:

21421. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand dollars ($2,000), shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, and to be subject to the provisions of that title. The board shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, where the estimated cost of the work does not exceed two thousand dollars ($2,000), or where the work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars ($2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3 of Chapter 2123 of the Statutes of 1959, or to a contract authorized by a vote of the electorate of the district.

SEC. 61. Section 21431 of the Public Contract Code is amended to read:

21431. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand dollars ($2,000), shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall